
UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD. (IN THREE VOLUMES.)

THE LINN & LANE TIMBER COMPANY, CHARLES A. SMITH,
CHARLES J. SWENSON and FREDERICK A. KRIBS,
Appellants,

vs.

THE UNITED STATES OF AMERICA,

Appellee,

and

THE UNITED STATES OF AMERICA,

Appellant,

vs.

C. A. SMITH, FREDERICK A. KRIBS, CHARLES J. SWENSON,
O. JUDD MEALEY, WILL MEALEY, J. A. THOMPSON,
GEORGE F. MEALEY, RICHARD F. MALONE, WILLIAM
J. LAWRENCE, ALEXANDER GOULD, JOHN J. GILLI-
LAND, LOUIS MAYNARD, JOSEPH O. MICKALSON, JAMES
W. ROZELL, JOHN THOMAS PARKER, SAMUEL D. PICK-
ENS, SIDNEY H. SCANLAND, JOSEPH H. STEINGRANDT,
CORNELIUS N. TUTHILL, RICHARD D. WATKINS,
CHARLES WILEY, WILLIAM W. BILLINGS, and LINN
& LANE TIMBER COMPANY,

Appellees.

VOLUME I.

(Pages 1 to 336, Inclusive.)

Appeals from the United States Circuit Court for the
District of Oregon.

FILED

JUN 27 1911

Records of U.S. Circuit
Court of Appeals
64/3

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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(Title of Court and Cause.)

Names and Addresses of Attorneys of Record.

Mr. JOHN LIND, Mr. A. UELAND and Mr. W. M. JEROME, Minneapolis, Minnesota, and DOLPH, MALLORY, SIMON and GEARIN, Mohawk Building, Portland, Oregon, for Linn and Lane Timber Company, Charles A. Smith and Charles J. Swenson.

Mr. A. H. TANNER, Portland, Oregon, for Frederick A. Kribs.

Mr. JOHN McCOURT, United States Attorney, Portland, Oregon, for the United States of America.

(Title of Court and Cause.)

Stipulation as to Printing of Records, etc.

Whereas, said complainant and defendants have appealed from a decree of the Circuit Court for the District of Oregon in the above-entitled cause to said Court of Appeals, and one transcript of the record of such Circuit Court has been prepared for both appeals, it is hereby stipulated between the complainant, by the United States Attorney for the District of Oregon and said defendants, by their solicitors and counsel, as follows:

1. The cost of docketing said cause in said Court of Appeals and of printing said transcript shall be

paid, one-half by the complainant and one-half by the defendants.

2. Either of the parties may cause said transcript to be printed, certified and filed in said Court of Appeals as provided by the Act of February 13, 1911, and the order or rule of the Supreme Court, promulgated March 13, 1911, all objections for non-compliance with Rule 23 of said Court of Appeals and by reason of no rule having been adopted by the Circuit Court for the District of Oregon as contemplated by said Act being hereby waived; and either party may without notice to the other apply to said Circuit Court for a rule or order authorizing said transcript to be printed, certified and filed as in this paragraph provided.

3. But either party may have said transcript printed as provided by rule 23 of said Court of Appeals.

4. It is agreed that whether the printing of said transcript be done in accordance with paragraph 2, or in accordance with paragraph 3 hereof, the following parts may be omitted in such printing, to wit:

Praecipe of appearance for Frederick A. Kribs found on page 27; U. S. Exhibits 164 to 167, inclusive, found on pages 513 to 526, inclusive; Government Exhibit 26 found on pages 715 to 716, inclusive; certificate in blank of Stephen Sanford, found on page 733, and the title of the case except in the original bill, the amended bill, and the opinion of the Court; and where the title is so omitted there is to

be printed in place thereof "(Title of Court and Cause)."

Dated April 3d, 1911.

JOHN McCOURT,

United States Attorney for the District of Oregon.

JOHN LIND,

A. UELAND,

JNO. M. GEARIN,

Solicitors and Counsel for Linn and Lane Timber
Company, C. A. Smith and C. J. Swanson.

ALBERT H. TANNER,

Solicitor and Counsel for F. A. Kribs.

[Endorsed]: No. 1972. In the Circuit Court of Appeals for the Ninth Circuit. The United States of America, Plaintiff, vs. Chas. A. Smith, Chas. J. Swanson et al., Defendants. Stipulation. Filed Apr. 5, 1911. F. D. Monekton, Clerk.

(Title of Court and Cause.)

Order Extending Time to File Transcript of Record.

Now on this day comes the complainant by its attorney, Mr. John McCourt, United States Attorney for said District of Oregon, and defendants Charles A. Smith, Charles J. Swanson, Linn & Lane Timber Company and Frederick A. Kribs, by Mr. John M. Gearin, Mr. A. Ueland and Mr. A. H. Tanner, of counsel, and thereupon this cause comes on to be heard upon motion of complainant and said defendants for an extension of time in which to file a transcript herein in the United States Circuit Court of Appeals for the Ninth Circuit, and, by consent of Counsel, it is ordered that the time heretofore

granted in which to file said transcript of record in said United States Circuit Court of Appeals for the Ninth Circuit be and the same is hereby extended to June 1st, 1911.

Dated March 27th, 1911.

WM. B. GILBERT,
Judge United States Circuit Court of Appeals for
the Ninth Circuit.

[Endorsed]: No. 1972—C. C. A. No. 3319. In the Circuit Court of the United States, for the District of Oregon. United States of America, Plaintiff, vs. Chas. A. Smith, Chas. J. Swanson et al., Defendants. Order Extending Time to File Transcript. Filed Apr. 5, 1911. F. D. Monekton, Clerk.

Citation on Appeal [Original].

No. 3319.

United States of America,
District of Oregon,—ss.

To United States of America, Greeting:

Whereas, the Linn & Lane Timber Company, Charles A. Smith, Charles J. Swanson and Frederick A. Kribs have lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit from a decree rendered in the Circuit Court of the United States for the District of Oregon, in your favor, and has given the security required by law; you are, therefore, hereby, cited and admonished to be and appear before said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, to show cause, if any there be, why the said decree

should not be corrected, and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said District, this 7th day of March, in the year of our Lord, one thousand nine hundred and eleven.

R. S. BEAN,
Judge. [1*]

Due service of the foregoing Citation on appeal is hereby admitted, March 7th, 1911.

JOHN McCOURT,
U. S. Attorney.

[Endorsed]: No. 3319. United States Circuit Court, District of Oregon. United States of America, Complainant, vs. C. A. Smith et al., Defendants. Citation on Appeal. Filed March 7, 1911. G. H. Marsh, Clerk.

(Title of Court and Cause.)

Citation on Appeal [Original].

United States of America,
District of Oregon,—ss.

To C. A. Smith, Frederick A. Kribs, Charles J. Swenson, O. Judd Mealey, Will Mealey, J. A. Thompson, George F. Mealey, Richard F. Malone, William J. Lawrence, Alexander Gould, John J. Gilliland, Louis Maynard, Joseph O. Mickalson, James W. Rozell, John Thomas Parker, Samuel D. Pickens, Sidney H. Scanland, Joseph H. Steingrandt, Cornelius N. Tut- hill, Richard D. Watkinds, Charles Wiley, William W. Billings and Linn & Lane Timber Company, Defendants Above Named, Greeting:

*Page-number appearing at foot of page of original Certified Record.

Whereas, The United States of America, complainant above named, has lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit from a decree rendered in the Circuit Court of the United States for the District of Oregon in the above-entitled suit, in your favor, [2] and has given the security required by law;

YOU ARE, therefore, hereby cited and admonished to be and appear before said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, to show cause, if any there be, why the said decree should not be corrected and speedy justice should not be done to the parties in that behalf.

GIVEN under my hand at Portland in said District this 11th day of March in the year of our Lord, one thousand nine hundred and eleven.

R. S. BEAN,
Judge. [3]

United States of America,
District of Oregon,—ss.

Due, legal and timely service of the within Citation on Appeal is hereby accepted at Portland, Oregon, this 11th day of March, 1911.

JNO. M. GEARIN,
Solicitor for Defendants Linn & Lane Timber Co.,
C. A. Smith, C. J. Swanson.

United States of America,
District of Oregon,—ss.

Due, legal and timely service of the within Citation on Appeal is hereby accepted at Portland, Ore-

gon, this 11 day of March, 1911.

A. H. TANNER,

Solicitor for Defendant Frederick A. Kribs.

United States of America,

District of Oregon,—ss.

Due, legal and timely service of the within Citation on Appeal is hereby accepted at Portland, Oregon, this 11 day of March, 1911.

L. H. TARPLEY,

Solicitor for Defendants Samuel D. Pickens, Joseph H. Steingrandt and Alexander Gould.

United States of America,

District of Oregon,—ss.

Due, legal and timely service of the within Citation an Appeal is hereby accepted at Portland, Oregon, this ——— day of ———, 1911.

—————, [4]

United States of America,

District of Oregon,—ss.

I, John McCourt, United States Attorney for the District of Oregon, being first duly sworn, depose and say that Honorable Percy R. Kelly is attorney and solicitor of record in the above-entitled cause, of the within named defendants: O. Judd Mealey, Will Mealey, J. A. Thompson, Richard F. Malone, John J. Gilliland, Louis Maynard, Joseph O. Mickalson, James W. Rozell, John Thomas Parker, Sidney H. Scanland, Richard D. Watkins and Charles Wiley; that the said Percy R. Kelly does not reside in the City of Portland, Oregon, but is a resident of Albany, Linn County, Oregon; that he did not endorse upon his appearance or answer or other plead-

ings herein, a designation of the place in Portland where notices and copies in said suit might be served upon him; that I did on this day deposit with the clerk of the Circuit Court of the United States for the District of Oregon, a true copy of the within and foregoing Citation on Appeal herein, for the said Percy R. Kelly, with directions to said clerk to transmit or deliver the same to the said Percy R. Kelly.

[Seal]

JOHN McCOURT,
United States Attorney for Oregon.

Subscribed and sworn to before me this 11th day of March, 1911.

ROBERT F. MAGUIRE,
Notary Public for Oregon. [5]

[Endorsed]: No. 3319. In the Circuit Court of the United States for the District of Oregon. United States of America, Complainant, vs. C. A. Smith et al., Defendants. Citation on Appeal. Filed March 14, 1911. G. H. Marsh, Clerk. [6]

*In the Circuit Court of the United States for the
District of Oregon.*

April Term, 1908.

BE IT REMEMBERED, that on the 25th day of May, 1908, there was duly filed in the Circuit Court of the United States for the District of Oregon, a Bill of Complaint, in words and figures as follows, to wit:
[7]

[Bill of Complaint.]

*In the Circuit Court of the United States for the
District of Oregon.*

THE UNITED STATES OF AMERICA,
Complainant,

vs.

C. A. SMITH, FREDERICK A. KRIBS,
CHARLES J. SWENSON, O. JUDD
MEALEY, WILL MEALEY, J. A. THOMP-
SON, GEORGE F. MEALEY, RICHARD
F. MALONE, WILLIAM J. LAWRENCE,
ALEXANDER GOULD, JOHN J. GILLI-
LAND, LOUIS MAYNARD, JOSEPH O.
MICKALSON, JAMES W. ROZELL, JOHN
THOMAS PARKER, SAMUEL D. PICK-
ENS, SIDNEY H. SCANLAND, JOSEPH
H. STEINGRANDT, CORNELIUS N.
TUTHILL, RICHARD D. WATKINDS,
CHARLES WILEY, FRED WODTLI and
WILLIAM W. BILLINGS,

Defendants.

To the Honorable Judges of the Circuit Court of the
United States of America, for the District of
Oregon, in Chancery Sitting:

Your orator, the United States of America, by and
under the direction of Attorney General of the
United States, brings this bill in equity against the
above-named defendants and each of them, and
thereupon your orator complains of said defendants
respectively and shows unto your Honors:

I.

That the complainant is now and was until the dates and times herein mentioned, the owner of the following described lands and premises, situate in the County of Linn, State and District of Oregon, and had the full legal title thereto at all said dates and times prior to the ninth (9th) day of July, 1902, and had the full legal [8] title to a portion of said lands as hereinafter shown up until August twelfth (12th) 1902, which said lands were, until the times herein mentioned, part of the public domain of the United States of America, and are particularly bounded and described as follows: The southeast quarter (SE. $\frac{1}{4}$), the northeast quarter (NE. $\frac{1}{4}$), and the southwest quarter (SW. $\frac{1}{4}$) section twenty-six (26) township fourteen (14) south, range two (2) east of the Willamette meridian; the east half of the east half and the west half of the northwest quarter and the west half of the southwest quarter (E. $\frac{1}{2}$ E. $\frac{1}{2}$, W. $\frac{1}{2}$ NW. $\frac{1}{4}$, W. $\frac{1}{2}$ SW. $\frac{1}{4}$) section ten (10), township fourteen south (14 S) range three (3) east of the Willamette meridian, and the southwest quarter of the southwest quarter (SW. $\frac{1}{4}$ SW. $\frac{1}{4}$), south half of the southwest quarter (S. $\frac{1}{2}$ SW. $\frac{1}{4}$), northwest quarter of the southwest quarter (NW. $\frac{1}{4}$ SW. $\frac{1}{4}$), north half of the northeast quarter (N. $\frac{1}{2}$ NE. $\frac{1}{4}$), southeast quarter of northeast quarter (SE. $\frac{1}{4}$ NE. $\frac{1}{4}$) and the northeast quarter of the southeast quarter (NE. $\frac{1}{4}$ SE. $\frac{1}{4}$) of section eleven (11), and the west half of the west half (W. $\frac{1}{2}$ W. $\frac{1}{2}$) of section twelve (12) and the northwest quarter of the northwest quarter of section seventeen (17), township

fourteen (14) south, range three (3) east of the Willamette meridian; and the west half of the northeast quarter (W. $\frac{1}{2}$ NE. $\frac{1}{4}$), northeast quarter of the northeast quarter (NE. $\frac{1}{4}$ NE. $\frac{1}{4}$), south half of the southeast quarter (S. $\frac{1}{2}$ SE. $\frac{1}{4}$) and lots three (3) and four (4) section eighteen (18), and east half of the southwest quarter (E. $\frac{1}{2}$ SW. $\frac{1}{4}$), south half of southeast quarter (S. $\frac{1}{2}$ SE. $\frac{1}{4}$) of section twenty (20), and the northwest quarter (NW. $\frac{1}{4}$), west half of southwest quarter (W. $\frac{1}{2}$ SW. $\frac{1}{4}$), northeast quarter southwest quarter (NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$), northwest quarter of southeast quarter (NW. $\frac{1}{4}$ SE. $\frac{1}{4}$), west half of northeast quarter (W. $\frac{1}{2}$ NE. $\frac{1}{4}$), southeast quarter of the northeast quarter (SE. $\frac{1}{4}$ NE. $\frac{1}{4}$), and the northeast quarter southeast quarter (NE. $\frac{1}{4}$ of SE. $\frac{1}{4}$) of section twenty-two (22); and the east half of the northwest quarter (E. $\frac{1}{2}$ NW. $\frac{1}{4}$), southwest quarter of northwest quarter (SW. $\frac{1}{4}$ NW. $\frac{1}{4}$) and southwest quarter northeast quarter (SW. $\frac{1}{4}$ NE. $\frac{1}{4}$) of section [9] twenty-four (24) and northwest quarter of northwest quarter (NW. $\frac{1}{4}$ NW. $\frac{1}{4}$) of section twenty-seven (27) and west half of northeast quarter (W. $\frac{1}{2}$ of NE. $\frac{1}{4}$), northeast quarter of northeast quarter (NE. $\frac{1}{4}$ NE. $\frac{1}{4}$) northwest quarter (NW. $\frac{1}{4}$), north half of southeast quarter (N. $\frac{1}{2}$ SE. $\frac{1}{4}$), and the north half of the southwest quarter (N. $\frac{1}{2}$ SW. $\frac{1}{4}$) of section twenty-eight (28), in township fourteen (14) south, range four (4) east of the Willamette meridian.

II.

That from and after the twelfth day of August, 1902, the complainant still continued to be, and is

now, the owner of the equitable title to all of said above-described lands.

III.

Your orator further shows unto your Honors that some time prior to the month of August, 1900, and for many years prior thereto, the above-described lands in said Linn County, State and District of Oregon, were part of the public domain of the United States and subject to entry and sale in conformity with the land laws of the United States.

IV.

Your orator further shows unto your Honors that some time prior to the month of May, 1900, the above-named defendants Frederick A. Kribs, C. A. Smith, Charles J. Swenson, O. Judd Mealey, Will Mealey and John O. Thompson together with other persons to your orator unknown, entered into a conspiracy and agreement to defraud the Government of the United States out of the title to the above-described lands, and in and by said conspiracy and agreement it was understood and agreed that the said defendants O. Judd Mealey, Will Mealey and John O. Thompson should solicit and procure persons to make applications and entries, together with and in addition to certain of themselves upon the lands above described, under the Act of Congress of June third (3d) 1878, providing for the sale of timber lands in the States of California, Oregon, Nevada and in Washington Territory, at the United States Land Office at Roseburg, Oregon, and that the said O. Judd Mealey, Will Mealey and John O. Thompson should, prior [10] to procuring and obtaining such persons to file upon

said lands, as aforesaid, enter into an agreement with each and every of said persons in and by which said agreement each of said persons so filing on said lands promised and agreed that the title which he or she might acquire from the Government of the United States should inure to the *menefit* of the said defendants Frederick A. Kribs, C. A. Smith, Charles J. Swenson, or some of them, and that as soon as said applicants should be permitted to enter said lands so to be filed upon by him or her and a certificate should issue to such applicant, showing that such applicant had been permitted to enter said lands so filed upon and had made payment in full therefor, as required by law, then such applicant would thereupon and thereafter execute and deliver to the said defendants Frederick A. Kribs, C. A. Smith and Charles J. Swenson or some of them, a warranty deed, conveying said lands to the said Frederick A. Kribs, C. A. Smith or Charles J. Swenson or some of them, and the said defendants O. Judd Mealey, Will Mealey and John O. Thompson should promise each of said applicants upon behalf of themselves and said defendants Frederick A. Kribs, C. A. Smith and Charles J. Swenson to pay the respective applicants all expenses of filing and proof upon the lands applied for by such applicants and pay the price required to be paid the United States for said lands, all of such payments to be made by the said defendants named in this paragraph at the time of proof and cash entried should be made.

V.

That thereafter, on and between the eighth (8th)

day of May, 1900, and the nineteenth (19th) day of July, 1900, pursuant to said unlawful conspiracy and agreement, hereinafter set forth, the defendants O. Judd Mealey, Will Mealey and John A. Thompson solicited and procured the defendants hereinafter named to make applications to purchase and enter the lands hereinafter described, under the Act of Congress of June third (3d), 1878, providing for the sale of timber lands in the State of California, Oregon, Nevada and in Washington Territory, at the United States Land Office at Roseburg, [11] Oregon, and the said defendants O. Judd Mealey, and John A. Thompson each also made an application to purchase and enter the hereinafter described lands under said Act above mentioned; and, pursuant to said unlawful conspiracy, each of said applicants to purchase and enter said lands filed a statement in duplicate verified by the oath of each applicant, as required by law, and all of said applications were filed at the United States Land Office at Roseburg, Oregon, on the dates and in the manner hereinafter set forth:

Timber and Stone Sworn Statement No. 1143, by Richard F. Malone, for the northwest quarter (NW. $\frac{1}{4}$) of section twenty-two (22), township fourteen (14) south, range four (4) east of Willamette meridian, filed July twelfth (12th) 1900;

Timber and Stone Sworn Statement No. 1146, by William J. Lawrence, for the east half of the southwest quarter (E. $\frac{1}{2}$ SW. $\frac{1}{4}$) and the south half of the southeast quarter (S. $\frac{1}{2}$ S. E. $\frac{1}{4}$) of section twenty (20), township fourteen (14) south, range (4) east of the Willamette meridian, filed July twelfth (12th), 1900;

Timber and Stone Sworn Statement No. 1144, by Alexander Gould for the east half of the northwest quarter (E. $\frac{1}{2}$ NW. $\frac{1}{4}$) and the southwest quarter of the northwest quarter (SW. $\frac{1}{4}$ NW. $\frac{1}{4}$) and the southwest quarter of the northeast quarter (SW. $\frac{1}{4}$ NE. $\frac{1}{4}$) of section twenty-four (24), township fourteen (14) south, range four (4) east of the Willamette meridian, filed July twelfth (12th), 1900;

Timber and Stone Sworn Statement No. 1150, by John J. Gilliland, for the northwest quarter (NW. $\frac{1}{4}$) of section twenty-eight (28) township fourteen (14) south, range four (4) east of the Willamette meridian, filed July twelfth (12th), 1900;

Timber and Stone Sworn Statement No. 1150, by Louis Maynard, for the west half of the southwest quarter (W. $\frac{1}{2}$ SW. $\frac{1}{4}$) and the northeast quarter of the southwest quarter (NE. $\frac{1}{4}$ SW. $\frac{1}{4}$) and the northwest quarter of the southeast quarter (NW. $\frac{1}{4}$ SE. $\frac{1}{4}$) of section twenty-two (22), township fourteen (14) south, range four (4) east of the Willamette meridian, filed July twelfth (12th), 1900;

Timber and Stone Sworn Statement No. 1023, by O. Judd Mealey, for the southwest quarter (SW. $\frac{1}{4}$) of section twenty-six (26) township fourteen (14) south, range four (4) east of the Willamette meridian, filed May fifteenth (15th), 1900;

Timber and Stone Sworn Statement No. 1106, by Joseph O. Mickalson, for the west half of the East half (W. $\frac{1}{2}$ E. $\frac{1}{2}$) of section ten (10), township fourteen south, range three (3) east of the Willamette meridian, filed June 14th (fourteenth), 1900;

Timber and Stone Sworn Statement No. 1151m, by

James W. Rozell, for the north half of the southeast quarter (N. $\frac{1}{2}$ SE. $\frac{1}{4}$) and the north half of the southwest quarter (N. $\frac{1}{2}$ SW. $\frac{1}{4}$) of section twenty-eight (28), township fourteen (14) south, range four (4) east of the Willamette meridian, filed July thirteenth (13th), 1900;

Timber and Stone Sworn Statement No. 1107, by John Thomas Parker, for the north half of the northeast quarter (N. $\frac{1}{2}$ NE. $\frac{1}{4}$) and the southeast quarter of the northeast quarter (SE. $\frac{1}{4}$ NE. $\frac{1}{4}$) and the northeast quarter of the southeast quarter (NE. $\frac{1}{4}$ SE. $\frac{1}{4}$) of section eleven (11) township fourteen (14) south, range three (3) east of the Willamette meridian, filed June fourteenth (14), 1900; [12]

Timber and Stone Sworn Statement No. 1111, by Samuel D. Pickens, for the west half of the southwest quarter (W. $\frac{1}{2}$ SW. $\frac{1}{4}$) and the southeast quarter of the southwest quarter (SE. $\frac{1}{4}$ SW. $\frac{1}{4}$) and the southwest quarter of the southeast quarter (SW. $\frac{1}{4}$ SE. $\frac{1}{4}$) of section eleven (11) township fourteen (14) south, range three (3) east of the Willamette meridian, filed June fourteenth (14th), 1900;

Timber and Stone Sworn Statement No. 1145, by Sidney H. Scanland, for the west half of the northeast quarter (W. $\frac{1}{2}$ NE. $\frac{1}{4}$) and the northeast quarter or the northeast quarter (NE. $\frac{1}{4}$ NE. $\frac{1}{4}$) of section twenty-eight (28), and the northwest quarter of the northwest quarter (NW. $\frac{1}{4}$ NW. $\frac{1}{4}$) of section twenty-seven (27) township fourteen (14) south, range four (4) east of the Willamette meridian, filed July twelfth (12th), 1900;

Timber and Stone Sworn Statement No. 1108, by

Joseph Steingrandt, for the east half of the east half (E. $\frac{1}{2}$ E. $\frac{1}{2}$) of section ten (10), township fourteen (14) south, range three (3) east of the Willamette meridian, filed June fourteenth (14th), 1900;

Timber and Stone Sworn Statement No. 1022, by John A. Thompson, for the northeast quarter (NE. $\frac{1}{4}$) of section twenty-six (26), township fourteen (14) south, range two (2) east of the Willamette meridian, filed May fifteenth (15th), 1900;

Timber and Stone Sworn Statement No. 1165, by Cornelius N. Tuthill, for the south half of the southeast quarter (S. $\frac{1}{2}$ SE. $\frac{1}{4}$) and lots three (3) and four (4), section eighteen (18), township fourteen (14) south, range four (4) east of the Willamette meridian, filed July nineteenth (19th), 1900;

Timber and Stone Sworn Statement No. 1148, by Richard C. Watkinds, for the west half of the northeast quarter (W. $\frac{1}{2}$ NE. $\frac{1}{4}$) and the southeast quarter of the northeast quarter (SE. $\frac{1}{4}$ NE. $\frac{1}{4}$) and the northeast quarter of the southeast quarter (NE. $\frac{1}{4}$ SE. $\frac{1}{4}$) of section twenty-two (22) township fourteen south, range four (4) east of the Willamette meridian, filed July twelfth (12th), 1900;

Timber and Stone Sworn Statement No. 1110, by Charles Wiley, for the west half of the west half of section 12 (W. $\frac{1}{2}$ W. $\frac{1}{2}$ Sec. 12) township fourteen (14) south, range three (3) east of the Willamette meridian, filed June fourteenth (14th), 1900;

Timber and Stone Sworn Statement No. 1004, by Fred Wodtli, for the southeast quarter (SE. $\frac{1}{4}$) of section twenty-six (26) township fourteen (14) south, range two (2) east of the Willamette meridian,

filed May eighth (8th), 1900;

Timber and Stone Sworn Statement No. 1105, by William W. Billings, for the northwest quarter (NW. $\frac{1}{4}$ NW. $\frac{1}{4}$) of section seventeen (17) and the north half of the northeast quarter (N. $\frac{1}{2}$ NE. $\frac{1}{4}$) and the southwest quarter of the northeast quarter (SW. $\frac{1}{4}$ NE. $\frac{1}{4}$) of section eighteen (18) township fourteen (14) south, range three (3) east of the Willamette meridian, filed June fourteenth (14th), 1900.

VI.

Your orator further shows unto your Honors and alleges: That pursuant to said unlawful conspiracy and agreement each of said applicants to purchase and enter timber lands, mentioned and described in the last preceding paragraph of this Bill, with the exception of the defendants O. Judd Mealey and John A. Thompson, prior to making [13] and filing his or her application to purchase and enter said lands, made and entered into a contract and agreement with the said defendants O. Judd Mealey, Will Mealey and John A. Thompson, whereby each of said applicants promised and agreed to purchase and enter said lands for the use and benefit of the defendants Frederick A. Kribs, C. A. Smith and Charles J. Swenson whom the said O. Judd Mealey, Will Mealey and John A. Thompson then and there represented and acted for, and each of said applicants further agreed that upon being permitted to enter and purchase the lands so applied for to thereupon and thereafter transfer, convey and set over said lands by warranty deed to the said Frederick A. Kribs, C. A. Smith and Charles

J. Swenson, or some of them, and the said defendants O. Judd Mealey, and John A. Thompson, prior to making their said applications and entries, hereinbefore mentioned, each entered into an agreement with the said defendants C. A. Smith and Frederick A. Kribs, in and by which the said O. Judd Mealey and John A. Thompson each promised and agreed, upon being permitted to enter said lands so applied for and filed upon by him, to transfer, convey and set over said lands by warranty deed to the said defendants Frederick A. Kribs, C. A. Smith or Charles J. Swenson; and in consideration of the foregoing agreements made by such applicants except the said O. Judd Mealey and John A. Thompson, the said O. Judd Mealey, Will Mealey and John A. Thompson promised and agreed to pay to each of said applicants the sum of Fifty Dollars (\$50.00) and pay all the expenses of filing and making final proof thereon, together with the purchase price of the lands applied for by each of said applicants; and the said defendant Frederick A. Kribs promised and agreed to pay all the expenses of filing and making final proof, together with the purchase price of the lands included in the respective applications and entries of the said O. Judd Mealey, and John A. Thompson.

And your orator further shows unto your Honors and alleges: That each of said applicants hereinbefore mentioned and described and upon the dates hereinbefore set forth, filed a written statement in duplicate which is hereinbefore designated as "Timber [14] and Stone Sworn Statement," in which said written statement each of said applicants desig-

nated by legal subdivision the particular tract of land he or she desired to purchase, and set forth that the same was unfit for cultivation and valuable chiefly for its timber; that it was uninhabited, contained no mining or other improvements, nor, as such applicant verily believed, any valuable deposit of gold, silver, cinnabar, copper or coal, and that such applicant had made no other application under said Act, and that he or she did not apply to purchase the land above described on speculation, but in good faith to appropriate it to his or her own exclusive use and benefit, and that he or she had not directly or indirectly made any agreement in any way or manner with any person or persons whomsoever, by which the title which he or she might acquire from the Government of the United States should inure to the benefit of any persons except himself or herself, which said statement of each of said applicants was verified by the oath of the respective applicants before the Register or Receiver of the said Land Office at Roseburg, Oregon, or before some other officer authorized by law to administer such oath.

Your orator further shows unto your Honors and alleged: That upon the filing of said statements, as hereinbefore set forth, the Register of the said United States Land Office, at Roseburg, Oregon, posted a notice of each of said applicants, as required by law, and furnished each of said applicants a copy of such notice for publication, and the said defendants O. Judd Mealey, Will Mealey and John A. Thompson pursuant to said unlawful conspiracy and agreement hereinbefore mentioned, caused each of said notices

to be duly and regularly published in a newspaper, as required by law, and after the expiration of such application the said defendants O. Judd Mealey, Will Mealey and John A. Thompson furnished to the Register of said Roseburg Land Office satisfactory evidence that said notice of the application of each of said applicants had been duly published in *an* newspaper, as required by law, and procured each of said applicants to furnish satisfactory evidence to said Register that the said land included in each of said applications [15] was unfit for cultivation and valuable chiefly for its timber, and that said land was unoccupied and without improvements either mining or agricultural, and that it apparently contained no valuable deposit of gold, silver, cinnabar, copper or coal; and upon the submission of said evidence and proof so furnished and offered, and notwithstanding the facts as hereinbefore set forth, the officers of the said United States Land Office at Roseburg, Oregon, being ignorant thereof, and having no means of knowing or ascertaining the same, did receive from each of said applicants the sum of \$400.00 as payment for the lands described in said respective applications, under the said act of Congress of June third (3d), 1878, at the rate of \$2.50 per acre, and permitted each of said applicants to enter the lands described in his or her respective applications, and issued to each of said applicants a certificate to the effect that such applicant had purchased the land described therein and had made payment in full therefor, as required by law, which said entries, payments and certificates were permitted, made and issued on the dates and in

the manner following, to wit:

Final Certificate Number 8510, Richard F. Malone, October ninth (9th), 1900;

Final Certificate Number 8516, William J. Lawrence, October ninth (9th), 1900;

Final Certificate Number 8508, Alexander Gould, October ninth (9th), 1900;

Final Certificate Number 8511, John J. Gilliland, October ninth (9th), 1900;

Final Certificate Number 8512, Louis Maynard, October ninth (9th), 1900;

Final Certificate Number 8419, O. Judd Mealey, October ninth (9th), 1900;

Final Certificate Number 8446, Joseph O. Mickalson, August twenty-seventh (27th), 1900;

Final Certificate Number 8517, James W. Rozell, October ninth (9th), 1900;

Final Certificate Number 8445, John Thomas Parker, August twenty-seventh (27th), 1900;

Final Certificate Number 8444, Samuel D. Pickens, August twenty-seventh (27th), 1900;

Final Certificate Number 8509, Sidney H. Scanland, October ninth (9th), 1900;

Final Certificate Number 8447, Joseph H. Steingrandt, August twenty-seventh (27th), 1900;

Final Certificate Number 8422, John A. Thompson, August sixteenth (16th), 1900;

Final Certificate Number 8513, Cornelius N. Tut-hill, October ninth (9th), 1900;

Final Certificate Number 8522, R. C. Watkins, October ninth (9th), 1900; [16]

Final Certificate Number 8443, Charles Wiley, Au-

gust twenty-seventh (27th), 1900;

Final Certificate No. 8416, Fred Wodtli, August sixteenth (16th), 1900; and

Final Certificate No. 8442, William W. Billings, August twenty-seventh (27th), 1911.

VII.

And your orator further shows unto your Honors that pursuant to said unlawful conspiracy to defraud the United States out of its said lands as aforesaid and pursuant to said unlawful agreements entered into by the said defendants O. Judd Mealey, Will Mealey and John A. Thompson, with each of said applicants prior to making and filing applications for the purchase of the lands hereinbefore described, the said O. Judd Mealey, Will Mealey and John A. Thompson, at the time each of said applicants made proof before the officers of the United States Land Office at Roseburg, Oregon, as aforesaid, paid and advanced all the expenses and fees of each of said applicants and their respective witnesses, and paid, advanced and furnished the purchase money for the lands included in the application of each of said applicants except that the expenses, fees and purchase price of the lands included in the applications of the said O. Judd Mealey and John A. Thompson were paid by the defendant Frederick A. Kribs, and in truth and in fact the said Frederick A. Kribs, C. A. Smith, and Charles J. Swenson furnished and advanced all the moneys with which the fees, expenses and purchase moneys of the said applicants upon their said respective applications and entries, were paid; and thereupon each of said applicants executed

and delivered to the defendant Frederick A. Kribs a warranty deed purporting to transfer, convey and set over unto the said defendant, Frederick A. Kribs, the title to the lands included *in* described in their respective applications and entries; and in each of said deeds the applicants who were married were joined by their respective wives or husbands.

VIII.

And your orator further shows unto your Honors and alleges, that each of the applications and entries hereinbefore mentioned were made by the respective applicants and entymen and entrywoman [17] as agents of and for the use and benefit of the said defendants C. A. Smith, Frederick A. Kribs and Charles J. Swenson.

IX.

And your orator further shows unto your Honors and alleges: That thereafter the land officers of said United States Land Office at Roseburg, Oregon, transmitted to the General Land Office the papers and testimony relating to each of said applications, and thereafter, notwithstanding the facts hereinbefore mentioned and set forth, the President of the United States and the officers of the Department of the Interior and the General Land Office of the United States of America, being ignorant thereof and having no means of ascertaining the same, did on the ninth (9th) day of July, 1902, and the twelfth (12th) day of August, 1902, respectively, issue to each of said applicants to purchase and enter timber lands as hereinbefore set forth, a patent purporting to convey to the respective applicants the land de-

scribed in their respective applications.

X.

And your orator further avers that the false and fraudulent representations made by the defendants, as hereinbefore set forth, were all made with the intent to deceive and defraud the United States out of the use of, title to and possession of the lands hereinbefore described, and that your complainant relied upon said false and fraudulent representations so made as aforesaid, and by reason of such false and fraudulent representations and unlawful and corrupt practices of the said defendants, all of said patents hereinbefore mentioned and described are void and ought to be cancelled and annulled and held for naught.

XI.

And your orator further shows unto your Honors, that all of said lands patented to the defendants as hereinbefore set forth, were applied for, entered and filed upon by each of said defendants for the use and benefit of the defendants Frederick A. Kribs, C. A. Smith, and Charles J. Swenson and that before said lands were patented as aforesaid, to the respective defendants, each of said defendants conveyed the lands respectively patented to him or her, to the defendant [18] Frederick A. Kribs *and* hereinbefore alleged, and that the said defendant Frederick A. Kribs and his wife executed, acknowledged and delivered to the defendants C. A. Smith, on the twenty-fourth (24) day of October, 1904, a deed which purported to convey to the said C. A. Smith a three-quarter (3/4) undivided interest in and to the said

lands patented as hereinbefore set forth and on the twenty-eighth (28th) day of December, 1904, the defendant Frederick A. Kribs and his wife executed, acknowledged and delivered to the defendant Charles J. Swenson a deed, which purported to convey to the said Charles J. Swenson a one-quarter ($\frac{1}{4}$) undivided interest in and to all of the lands patented to the respective defendants as hereinbefore set forth.

And your orator further charges and avers that in each and every instance, and as to each and every party in this paragraph and above mentioned, he took and received said respective title deeds with full notice of the fraud so perpetrated upon your orator as alleged in this Bill of Complaint and without having paid or given any consideration therefor except that the said defendants Frederick A. Kribs, C. A. Smith and Charles J. Swenson paid and advanced all the fees and expenses of the respective applicants to purchase and enter said lands and paid the purchase money received by the Government of the United States therefor, and paid to each of such applicants the sum of fifty dollars (\$50.00) and further paid the said defendants O. Judd Mealey, Will Mealey and J. A. Thompson certain sums of money, the amounts of which are unknown to your orator, for soliciting and procuring said persons to apply for an *enter* and file upon said lands; all of which said payments were made under agreements made with the respective persons prior to the time at which said applications and entries were made; and said deeds were executed, acknowledged and delivered, taken and received, respectively by the said defend-

ants as mentioned hereinbefore in this Bill of Complaint for the purpose of effecting the objects and purposes of said unlawful conspiracy hereinbefore described, and each of such purchases and deeds is void in equity, and should be so declared [19] in favor of the United States and any purchases or pretended purchases, or incumbrances or liens, or pretended incumbrances or apparent liens alleged to be existing in law or in equity thereon, upon such lands or any portion thereof, should be declared fraudulent by the decree of this Honorable Court.

Forasmuch, therefore, as the complainant has been so as above alleged, cheated and defrauded out of its valuable lands and is remediless at and by the strict rules of the common law and is only relievable in a court of equity wherein such matters are fully cognizable and relievable, and to the end that the said defendants mentioned in the title to this Bill of Complaint and each of them may full, true, direct and certain answers make according to the best of their knowledge, information and belief to all and singular the matters and charges aforesaid, but not on oath, their answer on oath being hereby expressly waived, your orator prays as follows: that the said defendants mentioned in the title to this Bill of Complaint may be held adjudged and decreed to have defrauded the complainant of the lands and each and every description thereof hereinbefore set forth as patented by complainant to them or either of them; and that by reason of such frauds the patents issued to them or either of them or to others in their behalf, be declared void, and as such be held for naught and set

aside and the said land restored to the public domain of complainant; and that the defendants and each of them be held to pay into the treasury of complainant all such reasonable sums of money as it may be found necessary to lay out and expend in and about discovering and establishing the fraud, so as hereinbefore set forth and charged, and that this complainant may have all such further relief in the premises as may be conformable to equity and good conscience and as such seem proper to this Honorable Court. May it please your Honors to grant unto the complainant the Writ of Subpoena issuing out of and under the seal of this Honorable Court to be directed to the said defendants mentioned in the title to this Bill of Complaint. commanding them and each of them by a certain day and under a certain penalty therein to be inserted to be and [20] appear before this Honorable Court, and then and there to answer the premises and further to stand to and abide such order as shall be agreeable to equity and good conscience, and your orator will ever pray.

CHARLES J. BONAPARTE,

Attorney General of the United States.

JOHN McCOURT,

United States Attorney for the District of Oregon.

United States of America,

District of Oregon,—ss.

I, John McCourt, United States Attorney for the District of Oregon, being duly sworn, depose and say that the facts set forth in the foregoing complaint are true as I verily believe.

JOHN McCOURT.

Subscribed and sworn to before me this twenty-fifth (25th) day of May, A. D. 1908.

[Seal]

WALTER H. EVANS,
Notary Public for Oregon.

Bill of complaint. Filed May 25, 1908. G. H. Marsh, Clerk, U. S. Circuit Court, District of Oregon. [21]

And afterwards, to wit, on the 25th day of May, 1908, there was issued out of said court a Subpoena ad Respondendum, which with the returns of the Marshal as to the defendants C. A. Smith, Chas. J. Swenson, et al., and the defendant F. A. Kribs, in words and figures as follows, to wit:
[22]

[Marshal's Return to Subpoena ad Respondendum.]

District of Oregon,—ss.

I hereby certify and return, that on the 25th day of May, 1908, I received the within writ and that after diligent search and inquiry from F. A. Kribs and S. A. D. Puter I am unable to find the within named defendants C. A. Smith, Chas. J. Swenson, Wm. J. Lawrence (dead), Alexander Gould, George F. Mealey (dead) within my district.

CHAS. J. REED,
United States Marshal. [23]

[**Marshal's Return to Subpoena ad Respondendum.**]

RETURN OF CIVIL PROCESS.

United States of America,
District of Oregon,—ss.

I hereby certify that on the 30th day of May, 1908, at Portland, Multnomah County, in said District, I duly served the within Subpoena ad Respondendum upon the therein named Frederick A. Kribs and by delivering to him personally and in person a true copy of said Subpoena ad Respondendum duly certified by Clerk Circuit Court, together with a copy of the Complaint in the within entitled action, duly certified to by John McCourt, U. S. Atty. for said District.

CHARLES J. REED,
United States Marshal.

By W. B. Griffith,
Deputy. [24]

(Title of Court and Cause.)

Subpoena ad Respondendum.

The President of the United States of America, to
C. A. Smith, Frederick A. Kribs, Charles J. Swenson, O. Judd Mealey, Will Mealey, J. A. Thompson, George F. Mealey, Richard F. Malone, William J. Lawrence, Alexander Gould, John J. Gilliland, Louis Maynard, Joseph O. Mickalson, James W. Rozell, John Thomas Parker, Samuel D. Pickens, Sidney H. Scanland, Joseph H. Steingrandt, Cornelius N. Tut-

hill, Richard D. Watkinds, Charles Wiley, Fred Wodtli and William W. Billings, Greeting:

You, and each of you, are hereby commanded that you be and appear in said Circuit Court of the United States, at the courtroom thereof, in the city of Portland, in said District, on the first Monday of July next, which will be the 6th day of July, A. D. 1908, to answer the exigency of a Bill of Complaint exhibited and filed against you in our said Court, wherein the United States of America is complainant, and you are defendants, and further to do and receive what our said Circuit Court shall consider in this behalf, and this you are in no wise to omit under the pains and penalties of what may befall thereon.

And this is to command you, the Marshal of said District, or your Deputy, to make due service of this our Writ of Subpoena and to have then and there the same.

Hereof fail not.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 25th day of May, in the year of our Lord, one thousand nine hundred and eight, and of the Independence of the United States, the one hundred and thirty-second.

[Seal U. S. Circuit Court, District of Oregon.]

G. H. MARSH,

Clerk.

MEMORANDUM PURSUANT TO EQUITY
RULE NO. 12 OF THE SUPREME COURT
OF THE UNITED STATES:

The defendant is to enter his appearance in the above-entitled suit in the Office of the Clerk of said

Court on or before the day at which the above writ is returnable; otherwise the complainant's Bill therein may be taken *pro confesso*.

[Endorsed]: No. 3319. In the Circuit Court of the United States, for the District of Oregon. In Equity. The United States vs. C. A. Smith et al. Subpoena ad Respondendum. Filed July 20, 1908. G. H. Marsh, Clerk U. S. Circuit Court District of Oregon. [25]

And afterwards, to wit, on Saturday, the 11th day of July, 1908, the same being the 78th judicial day of the regular April, 1908, term of said court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge presiding—the following proceedings were had in said cause, to wit: [28]

[Order Dismissing Bill of Complaint as to Defendant Fred Wodtli.]

(Title of Court and Cause.)

Now, on this 11th day of July, 1908, the above-entitled suit coming on for hearing upon the motion of John McCourt, United States Attorney for the District of Oregon, for an order dismissing the bill of complaint in the above-entitled suit, as to the defendant Fred Wodtli, and as to the lands alleged in the complaint to have been patented to the said Fred Wodtli, and without prejudice to the rights of complainant as to the other defendants and other lands mentioned and described in said bill of complaint, and, it appearing upon the representations of said

John McCourt, United States Attorney for the District of Oregon, that said order should be made;

IT IS THEREFORE ORDERED AND DECREED that the said bill of complaint in the above-entitled suit be, and the same is hereby, dismissed as to the said defendant Fred Wodtli and as to the lands alleged in said bill of complaint to have been patented to the said Fred Wodtli, which said lands are described as follows:

“The Southeast $\frac{1}{4}$ of Section 26, Township 14 South, Range 2 east of the Willamette Meridian.”

[29]

But this order and decree is without prejudice to the rights of complainant as to the other defendants and the other lands mentioned and described in said bill of complaint herein.

CHAS. E. WOLVERTON,
Judge.

Filed July 11, 1908. G. H. Marsh, Clerk, U. S. Circuit Court, District of Oregon. [30]

And afterwards, to wit, on the 20th day of July, 1908, there was duly filed in said court a motion for order for nonresident defendants to appear and plead, in words and figures as follows, to wit: [31]

[**Motion for Order Directing C. A. Smith et al. to Appear, etc.**]

(Title of Court and Cause.)

Comes now the United States of America, the above-named complainant, by John McCourt, its at-

torney in and for the District of Oregon, and, based on the bill of complaint and affidavit herein filed, moves this Honorable Court to make and cause to be entered of record in this court an order directing C. A. Smith and Charles J. Swenson and Alexander Gould, defendants, to appear, plead, answer or demur to complainant's bill of complaint filed herein, by a day certain to be designated in such order.

JOHN McCOURT,

United States District Attorney.

Motion for Order. Filed July 20, 1908. G. H. Marsh, Clerk U. S. Circuit Court, District of Oregon.

[32]

And afterwards, to wit, on the 20th day of July, 1908, there was duly filed in said court an affidavit in support of motion for order for non-resident defendants to appear and plead, in words and figures as follows, to wit: [33]

**[Affidavit in Support of Motion for Order Directing
C. A. Smith et al. to Appear, etc.]**

(Title of Court and Cause.)

United States of America,
State and District of Oregon,—ss.

I, John McCourt, being first duly sworn, depose and say: That I am United States Attorney for the District of Oregon, and that, on the 25th day of May, 1908, a bill of complaint was filed in the above-entitled court, in the above-entitled suit, wherein complainant seeks to cancel, annul and set aside the patents to certain lands situate in the State and Dis-

trict of Oregon, and described in the above-mentioned bill of complaint, which said patents had heretofore been issued by complainant to the defendants O. Judd Mealey, Will Mealey, J. A. Thompson, George F. Mealey, Richard F. Malone, William J. Lawrence, Alexander Gould, John J. Gilliland, Louis Maynard, Joseph O. Mickalson, James W. Rozell, John Thomas Parker, Samuel D. Pickens, Sidney H. Scanland, Joseph H. Steingrandt, Cornelius N. Tuthill, Richard D. Wadkinds, Charles Wiley, Fred Wodtli and William W. Billings, respectively, and in and by said bill of complaint complainant further seeks to cancel, annul and [34] set aside all claims, rights, liens and conveyances of every nature asserted, held or made by the defendants, or any of them, in respect to or touching said lands described and set forth in said bill of complaint; that said patents to said lands, so issued to the defendants, as aforesaid, were obtained from complainant by said defendants through fraud and false and fraudulent representations, as more particularly appears in the bill of complaint on file herein, and to which reference is hereby made, and by such reference said bill of complaint is hereby made a part of this affidavit.

That said suit is one to enforce an equitable claim to the title to the said lands and real property described in said bill of complaint, and that the defendants C. A. Smith and Charles J. Swenson and Alexander Gould are not inhabitants or residents of the State or District of Oregon, and that none of them can be found in said State or District, and that none of said defendants has voluntarily appeared in said suit.

That on the said 25th day of May, 1908, there was issued out of the above-entitled court as subpoena ad respondendum, directed against all of the defendants named in the above-entitled suit, including the defendants last above named, which said subpoena was, on the 25th day of May, 1908, delivered to and placed in the hands of the United States Marshall for the District of Oregon for service upon all of said defendants named in the above-entitled suit, including said defendants C. A. Smith and Charles J. Swenson, and Alexander Gould, and that on the 20th day of July, 1908, the said United States Marshall for the District of Oregon, duly and regularly made return upon said subpoena ad respondendum, filed the same in the above-entitled court, and duly and regularly certified thereon that he had made diligent search and inquiry for said defendants C. A. Smith and Charles J. Swenson and Alexander Gould, and each of them, and had made inquiry of [35] persons likely to know the whereabouts of said last-named defendants, and that he was unable to find said defendants, or either or any of them, within the District or State of Oregon; that affiant is informed and believes that the above-named defendants, C. A. Smith and Charles J. Swenson, are now residents of and residing in Minneapolis, Hennepin County, State of Minnesota, and that the said Alexander Gould is a resident of and residing in San Luis Obispo, California.

That this affidavit and the motion herewith filed are made and filed for the purpose of obtaining an order of this Honorable Court directing that said defendants appear, plead, answer or demur herein

by a day certain, to be designated by this Honorable Court, and directing that said order be served upon said defendants, and each of them, as required by law and the rules of this Court.

That affiant is informed and believes that no person is in charge of or in possession of said reap property described in complainant's bill of complaint herein.

JOHN McCOURT,

Subscribed and sworn to before me this 20th day of July, 1908.

G. H. MARSH,

Clerk of the United States Court.

Filed July 20, 1908. G. H. Marsh, Clerk, United States Circuit Court, District of Oregon. [36]

And afterwards, to wit, on Monday, the 27th day of July, 1908, the same being the 91st judicial day of the regular April, 1908, term of said court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge presiding—the following proceedings were had in said cause, to wit: [37]

[**Marshall's Returns Re Service of Order, etc.**]

RETURN ON SERVICE OF WRIT.

United States of America,
District of Minnesota,—ss.

I hereby certify and return that I served the annexed order for nonresident defendants to appear and plead on the therein-named Charles A. Smith and Charles J. Swenson, by handing to and leaving

a true and correct copy thereof with Charles A. Smith and Charles J. Swenson, each personally, at Minneapolis, in said District, on the eleventh day of August, A. D. 190.

WILLIAM H. GRIMSHAW,
U. S. Marshal. [38]

RETURN ON SERVICE OF WRIT.

United States of America,
District of Minnesota,—ss.

I hereby certify and return that I served the annexed Bill of Complaint, referred to in Case #3319 on the therein-named Charles A. Smith, by handing to and leaving a true and correct copy thereof with Charles A. Smith, personally, at Minneapolis, in said District, on the eleventh day of August, A. D. 1908.

WILLIAM H. GRIMSHAW,
U. S. Marshal. [39]

(Title of Court and Cause.)

Order [Directing C. J. Swenson et al. to Appear, etc.].

Now, at this time comes on regularly to be heard the application of John McCourt, United States Attorney for the District of Oregon, appearing on behalf of complainant herein, for an order directing absent defendants C. A. Smith, Alexander Gould and Charles J. Swenson to appear and plead, answer or demur herein, by a day certain to be designated by the Court.

And it appearing to the Court that this suit is commenced by the United States of America, complainant, to enforce an equitable claim to real prop-

erty situated in the State and District of Oregon, the said suit being one to cancel and annul the patents to certain lands, which had heretofore been issued by complainant to defendants O. Judd Mealey, Will Mealey, J. A. Thompson, George F. Mealey, Richard F. Malone, William J. Lawrence, Alexander Gould, John J. Gilliland, Louis Maynard, Joseph O. Mickalson, James W. Rozell, John Thomas Parker, Samuel D. Pickens, Sidney H. Scanland, Joseph H. Steingrandt, Cornelius N. Tuthill, Richard D. Watkins, Charles Wiley, Fred Wodtli and William W. Billings, and that said C. A. Smith, Alexander Gould and Charles J. Swenson, defendants herein named, are not inhabitants of the District of Oregon, nor can they, or [40] either of them, be found in the State or District of Oregon, nor has either of them voluntarily appeared in and to said suit.

And the Court being of the opinion that said application should be granted;

IT IS HEREBY ORDERED that each of said defendants, Charles J. Swenson, Alexander Gould and C. A. Smith, shall appear, plead, answer or demur to the bill of complaint herein, within sixty days respectively, from the date upon which this said order may be served upon the defendants so required to appear, plead, answer or demur, at the term of this Court which may then be in session at the courtroom thereof, in the City of Portland, County of Multnomah and State of Oregon.

That certified copies of this order, prepared by the Clerk of the Court, under the seal of the Court, be served on the said C. A. Smith, Alexander Gould

and Charles J. Swenson by a United States Marshal for any District in the United States where said defendants may be found, and that there be served upon said defendant, C. A. Smith, with said certified copy of this order, a copy of plaintiff's bill certified as provided by the Rules of this Court.

Done in open court in the city of Portland, State of Oregon, this the 27th day of July, 1908.

CHAS. E. WOLVERTON,

Judge.

Filed July 27, 1908. G. H. Marsh, Clerk U. S. Circuit Court, District of Oregon. [41]

And afterwards, to wit, on the 5th day of September, 1908, there was duly filed in said court a plea of Frederick A. Kribs et al., to the Bill of Complaint, in words and figures as follows, to wit: [42]

[Joint and Several Plea of Frederick A. Kribs et al. to Complaint.]

(Title of Court and Cause.)

The joint and several plea of Frederick A. Kribs, O. Judd Mealey, Will Mealey, John A. Thompson (in the bill called J. A. Thompson), Richard F. Malone, John J. Gilliland, Louis Maynard, Joseph O. Michaelson, James W. Rozell, John Thomas Parker, Samuel D. Pickens, Sidney H. Scanland, Joseph H. Steingrandt, Richard D. Watkinds and Charles Wiley, defendants to the bill of complaint of the complainant.

These defendants, by protestation, not confessing or acknowledging all or any part of the matters and things in said bill of complaint contained to be true, in manner and form as the same are therein set forth, for plea nevertheless to said bill aver and say that on or about the 31st day of May, A. D. 1906, a corporation was duly organized and created under the general laws of the State of Minnesota by the name of Linn and Lane Timber Company, which said corporation by virtue of its charter and the general laws of said State of Minnesota, has at all times [43] had, and it now has, power and authority to buy, hold and sell timber and other lands and tenements in the United States of America, and to conduct forestry, mining and agricultural operations on the same, and which said corporation has at all times had, and it now has, its principal place of business at the City of Minneapolis in said State of Minnesota, and it has at all times, had, and it now has, officers and directors who reside at said City of Minneapolis. That on or about the 25th day of June, A. D. 1906, said corporation executed, acknowledged and caused to be filed and recorded in the office of the Secretary of State for said State of Oregon, a power of attorney wherein and whereby Frederick A. Kribs, a citizen of the United States, and a citizen and resident of said State of Oregon, was constituted and appointed its attorney in fact and agent, with such power and authority that lawful and valid service of all writs, processes or summons in any action, suit, or proceeding against said corporation in any of the Courts of said State of Oregon, or in

any Court of the United States in said State of Oregon, might and could thenceforth at all times be made upon said corporation by service thereof upon said Kribs as such attorney in fact and agent. That on said 25th day of June, 1906, said corporation was authorized to engage in business within said State of Oregon, in accordance with the provisions of an Act of the Legislative Assembly of said State, approved February 16, 1903, entitled "An Act to Provide for the Licensing of Domestic Corporations and Foreign Corporations, etc.," and said corporation has ever since said date been authorized, and it is now authorized, to buy, hold and sell timber and other lands and tenements in said State of Oregon, and ever since said date the said Frederick A. Kribs has continued to be, and he now is, the attorney in fact and agent of said corporation, for the purpose [44] and with the power and authority aforesaid; and ever since said date the said Frederick A. Kribs has resided, and he now resides, at the city of Portland, in said State, and his place of business has ever since said date been, and it now is, at Number 330 Chamber of Commerce Building, in said City of Portland.

These defendants further aver and say that on and prior to the 4th day of June, A. D. 1906, by virtue of divers mesne deeds and conveyances from the several entrymen in said bill of complaint named, Charles A. Smith became and was seized and possessed of the undivided three-fourths, and Charles J. Swanson of the undivided one-fourth of all the right, title, interest and estate which complainant granted in and to the lands described in said bill of

complaint to the several entrymen in said bill named by the several patents in said bill mentioned and described; that while respectively so seized and possessed of said right, title, interest and estate in said land, the said Charles A. Smith, by a deed dated the 4th day of June, A. D. 1906, and duly executed by himself and Johanna A. Smith, his wife, and the said Charles J. Swanson, by a deed dated the 28th day of May, A. D. 1907, and duly executed by himself and Christine Swanson, his wife (which said deeds are recorded in the office of the Recorder of Conveyances for the County of Linn, in said State of Oregon), granted, bargained, sold and conveyed to the said Linn and Lane Timber Company all the right, title, interest and estate in and to all the lands described in said bill of which said Charles A. Smith and said Charles J. Swanson were then so respectively seized and possessed; that both said deeds were executed and delivered to said company a long time before the said bill of complaint was filed, to wit, before the 29th day of May, A. D. 1907, and the said Linn and Lane Timber Company has ever since been, and it now is, by virtue of said deeds, the owner [45] of all the right, title, interest and estate which complainant granted to the several entrymen named in said bill of complaint by the several patents in said bill mentioned and described, and that ever since said 29th day of May, 1907, said company has claimed, and it now claims, to be seized of an estate in fee simple, absolute, in and to all said lands by virtue of the patents and deeds aforesaid. That by reason of the right, title, interest and estate in and to said

lands so acquired, held and claimed by said company, it, the said Linn and Lane Timber Company, is an indispensable party defendant herein, and for as much as the complainant has not made said company a party to said bill of complaint, said bill is deficient to answer the purposes of complete justice.

All of which matters and things these defendants do aver to be true and plead the same in abatement of complainant's said bill, and pray judgment of the Court whether they shall be compelled to further answer said bill, and pray to be hence dismissed with costs.

L. H. TARPLEY,
PERCY R. KELLY,
ALBERT H. TANNER,
Of Counsel for said Defendants.

I certify that in my opinion the foregoing plea is well founded in point of law.

L. H. TARPLEY,
Of Counsel for said Defendants.

[46]

State of Oregon,
County of Multnomah,—ss.

Frederick A. Kribs, one of the defendants in the above-entitled cause, being duly sworn, says, that the foregoing plea is true in point of fact, and is not interposed for delay.

FREDERICK A. KRIBS.

Subscribed and sworn to before me this 5th day of September, A. D. 1908.

[Seal]

L. H. TARPLEY,
Notary Public for Oregon.

Filed September 5, 1908. G. H. Marsh, Clerk,
United States Circuit Court, District of Oregon.
[47]

And afterwards, to wit, on Monday, the 5th day of
October, 1908, the same being the 1st judicial
day of the regular October term of said court—
Present, the Honorable CHARLES E. WOL-
VERTON, United States District Judge pre-
siding—the following proceedings were had in
said cause, to wit: [48]

**[Order Granting Fifteen Days Within Which to
Serve and File Amended or Supplemental Bill.]**

(Title of Court and Cause.)

Now, on this 5th day of October, 1908, the above-
entitled cause coming on to be heard upon the motion
of John McCourt, United States Attorney for the
District of Oregon, for fifteen days from this date
within which to file an amended bill, or supplemental
bill herein, as he may determine proper;

And it appearing to the Court that the defendants
Frederick A. Kribs, O. Judd Mealey, Will Mealey,
John A. Thompson (in the bill called J. A. Thomp-
son), Richard F. Malone, John J. Gilliland, Louis
Maynard, Joseph O. Michaelson, James W. Rozell,
John Thomas Parker, Samuel D. Pickens, Sidney H.
Scanland, Joseph H. Steingrandt, Richard D. Wat-
kinds and Charles Wiley, heretofore interposed a
plea herein alleging that the Linn & Lane Timber
Company, a corporation, claims some right, title or
interest in and to the subject matter of this suit and
is an indispensable party herein, and the said John

McCourt representing that complainant desires to amend his said bill or file a supplemental bill herein bringing in said Linn & Lane Timber Company as a party [49] defendant but without admitting any of the allegations of said plea of said defendants herein to be true, except that conveyances have been placed of record in Linn County, Oregon, since the commencement of this suit purporting to convey the said lands in controversy herein to the said Linn & Lane Timber Company;

And it further appearing to the Court that the application of said complainants shall be allowed in order that whatever rights the said Linn & Lane Timber Company has in said lands, if any, may be litigated in this suit.

Therefore, it is ordered that complainant have fifteen days from this date within which to serve and file an amended or supplemental bill herein as may be determined upon by it.

CHARLES E. WOLVERTON,

Judge.

Filed October 5, 1908. G. H. Marsh, Clerk,
United States Circuit Court, District of Oregon.

[50]

And afterwards, to wit, on the 8th day of October, 1908, there was duly filed in said Court a plea of Charles A. Smith et al. to the Bill of Complaint, in words and figures as follows, to wit: [51]

**[Joint and Several Plea of Charles A. Smith and
Charles J. Swanson to Bill of Complaint.]**

(Title of Court and Cause.)

The joint and several plea of Charles A. Smith (in the bill called C. A. Smith) and Charles J. Swanson (in the bill called Charles J. Swenson) to the bill of complaint of the complainant.

These defendants, by protestation, not confessing or acknowledging all or any part of the matters and things in said bill of complaint contained to be true, in manner and form as the same are therein set forth, for plea nevertheless to said bill aver and say that on or about the 31st day of May, A. D. 1906, a corporation was duly organized and created under the general laws of the State of Minnesota by the name of Linn and Lane Timber Company, which said corporation by virtue of its charter and the general laws of said State of Minnesota, has at all times had, and it now has, power and authority to buy, hold and sell timber and other lands and tenements in the United States of America, and to conduct forestry, mining and agricultural operations on the same, and which said corporation has at all [52] times had, and it now has, its principal place of business at the City of Minneapolis in said State of Minnesota, and it has at all times had, and it now has, officers and directors who reside at said City of Minneapolis. That on or about the 25th day of June, A. D. 1906, said corporation executed, acknowledged and caused to be filed and recorded in the office of the Secretary of State for said State of Oregon, a

power of attorney wherein and whereby Frederick A. Kribs, a citizen of the United States, and a citizen and resident of said State of Oregon, was constituted and appointed its attorney in fact and agent, with such power and authority that lawful and valid service of all writs, processes or summons in any action, suit, or proceeding against said corporation in any of the courts of said State of Oregon, or in any Court of the United States in said State of Oregon, might and could thenceforth at all times be made upon said corporation by service thereof upon said Kribs as such attorney in fact and agent. That on said 25th day of June, 1906, said corporation was authorized to engage in business within said State of Oregon, in accordance with the provisions of an Act of the Legislative Assembly of said State, approved February 16, 1903, entitled "An Act to Provide for the Licensing of Domestic Corporations and Foreign Corporations," etc., and said corporation has ever since said date been authorized, and it is now authorized, to buy, hold and sell timber and other lands and tenements in said State of Oregon, and ever since said date the said Frederick A. Kribs has continued to be, and he now is, the attorney in fact and agent of said corporation, for the purpose and with the power and authority aforesaid; and ever since said date the said Frederick A. Kribs has resided, and he now resides, at the city of Portland, in said State, and his place of business has ever since said date been, and it now is, at Number 330 Chamber of Commerce Building, in said city of Portland.

These defendants further aver and say that on and

prior to the 4th day of June, A. D. 1906, by virtue of divers mesne deeds and conveyances from the several entrymen in said bill of complaint named, [53] Charles A. Smith became and was seised and possessed of the undivided three-fourths, and Charles J. Swanson of the undivided one-fourth of all the right, title, interest and estate which complainant granted in and to the lands described in said bill of complaint to the several entrymen in said bill named by the several patents in said bill mentioned and described; that while respectively so seized and possessed of said right, title, interest and estate in said land, the said Charles A. Smith, by a deed dated the 4th day of June, A. D. 1906, and duly executed by himself and Johanna A. Smith, his wife, and the said Charles J. Swanson, by a deed dated the 28th day of May, A. D. 1907, and duly executed by himself and Christine Swanson, his wife (which said deeds are recorded in the office of the Recorder of Conveyances for the County of Linn, in said State of Oregon), granted, bargained, sold and conveyed to the said Linn and Lane Timber Company all the right, title, interest and estate in and to all the lands described in said bill of which said Charles A. Smith and said Charles J. Swanson were then so respectively seised and possessed; that both said deeds were executed and delivered to said Company a long time before the said bill of complaint was filed, to wit, before the 29th day of May, A. D. 1907, and the said Linn and Lane Timber Company has ever since been, and it now is, by virtue of said deeds, the owner of all the right, title, interest and estate which complainant granted to the

several entrymen named in said bill of complaint by the several patents in said bill mentioned and described, and that ever since said 29th day of May, 1907, said Company has claimed, and it now claims, to be seised of an estate in fee simple, absolute, in and to all said lands by virtue of the patents and deeds aforesaid. That by reason of the right, title, interest and estate in and to said lands so acquired, held and claimed by said Company, it, the said Linn and Land Timber Company, is an indispensable party defendant herein, and for as much as the complainant has not made said company a party to said bill of complaint, said bill is deficient to answer the purposes of complete justice.

All of which matters and things these defendants do aver to be true and plead the same in abatement of complainant's said bill [54] and pray judgment of the Court whether they shall be compelled to further answer said bill, and pray to be hence dismissed with costs.

(Signed) JOHN LIND,
A. UELAND,
W. M. JEROME,
JNO. M. GEARIN,
DOLPH, MALLORY, SIMON & GEARIN.

Of Counsel for said Defendants.

I certify that in my opinion the foregoing plea is well founded in point of law.

(Signed) A. UELAND,
Of Counsel for said Defendants. [55]

State of Minnesota,
County of Hennepin,—ss.

Charles J. Swanson, one of the defendants in the above-entitled cause, being duly sworn, says, that the foregoing plea is true in point of fact, and is not interposed for delay.

C. J. SWANSON.

Subscribed and sworn to before me, this 3d day of October, 1908.

W. M. JEROME,

Notary Public, Hennepin Co., Minn.

My commission expires June 26, 1914.

Notices and copies in the above-entitled cause may be served on each of the undersigned by delivering the same to John M. Gearin, Esq., at his office in the Mohawk Building in Portland, Oregon.

JOHN LIND,

A. UELAND,

W. W. JEROME,

Of Counsel for Said Defendants.

Service admitted Oct. 8, 1908.

JNO. McCOURT,

U. S. Attorney.

Filed October 8, 1908. G. H. Marsh, Clerk. [56]

And afterward, to wit, on Monday, the 19th day of October, 1908, the same being the 13th judicial day of the regular October, 1908, term of said court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge presiding—the following proceedings were had in said cause, to wit: [57]

[Order Allowing Ten Days' Further Time to File Amended or Supplemental Bill.]

(Title of Court and Cause.)

Now, at this day, on motion of Mr. John McCourt, United States Attorney, IT IS ORDERED that the plaintiff herein be, and it is hereby, allowed ten days' further time in which to file an amended Bill of Complaint or Supplemental Bill herein. [58]

And afterwards, to wit, on Thursday, the 29th day of October, 1908, the same being the 22d judicial day of the regular October, 1908, term of said court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge presiding—the following proceedings were had in said cause, to wit: [59]

[Order Allowing Five Days' Further Time to File Amended or Supplemental Bill.]

(Title of Court and Cause.)

Now, at this day, on motion of Mr. John McCourt, United States Attorney, IT IS ORDERED that the plaintiff herein be, and it is hereby, allowed five days' further time in which to file an Amended Bill of Complaint or Supplemental Bill herein. [60]

And afterwards, to wit, on Thursday, the 5th day of November, 1908, the same being the 28th judicial day of the regular October, 1908, term of said court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge

presiding—the following proceedings were had in said cause, to wit: [61]

[Order Allowing Five Days' Further Time to File Amended or Supplemental Bill.]

(Title of Court and Cause.)

Now, at this day, comes the plaintiff by Mr. John McCourt, United States Attorney, and the defendants C. A. Smith et al. by Mr. John M. Gearin, of counsel: Whereupon, on motion of said plaintiff, IT IS ORDERED that said plaintiff be, and it is hereby, allowed five days' further time in which to file an amended or supplemental Bill of Complaint herein.

[62]

And afterwards, to wit, on the 16th day of November, 1908, there was duly filed in said court, an Amended Bill of Complaint, in words and figures as follows, to wit: [63]

In the Circuit Court of the United States for the District of Oregon.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

C. A. SMITH, FREDERICK A. KRIBS, CHARLES J. SWENSON, P. JUDD MEALEY, WILL MEALEY, GEORGE F. MEALEY, RICHARD F. MALONE, J. A. THOMPSON, ALEXANDER GOULD, JOHN J. GILLILAND, LOUIS MAYNARD, JOSEPH O. MIKALSON, JAMES W. ROWELL, JOHN THOMAS PARKER, SAMUEL D. PICKENS, SIDNEY H. SCANLAND, JOSEPH

H. STEIGRANDT, CORNELIUS N. TUT-
HILL, RICHARD D. WATKINDS,
CHARLES WILEY, and WILLIAM W.
BILLINGS, and LINN & LANE TIMBER
COMPANY,

Defendants.

Amended Bill of Complaint.

To The Honorable Judges of the Circuit Court of the
United States of America for the District of Ore-
gon, in Chancery Sitting:

Your orator, the United States of America, by
and under the authority and direction of the Attor-
ney General of the United States, and by leave of
Court first had and obtained, brings this, its amended
bill in equity, against the above-named defendants,
and each of them, and thereupon your orator com-
plains of said defendants respectively and shows
unto your Honors:

I.

That the complainant was until the dates and
times herein mentioned, the owner of the following
described lands and premises, situate in the County
of Linn, State and [64] District of Oregon, and
had the full legal title thereto at all said dates and
times prior to the ninth day of July, 1902, and had the
full legal title to a portion of said lands as herein-
after shown up until August 12, 1902, which lands
were, until the times herein mentioned, part of the
public domain of the United States of America, and
particularly bounded and described as follows:

The southeast quarter (SE. $\frac{1}{4}$), the northeast
quarter (NE. $\frac{1}{4}$), and the southwest quarter (SW.
 $\frac{1}{4}$) of Section twenty-six (26), Township fourteen

(14) South, Range two (2) East of the Willamette Meridian; the east half of the east half (E. $\frac{1}{2}$ E. $\frac{1}{2}$) of Section ten (10), Township fourteen (14) South, Range three (3) East of the Willamette Meridian, and the southwest quarter of the southwest quarter (SW. $\frac{1}{4}$ SW. $\frac{1}{4}$), the south half of the southwest quarter (S. $\frac{1}{2}$ SW. $\frac{1}{4}$), the northwest quarter of the southwest quarter (NW. $\frac{1}{4}$ SW. $\frac{1}{4}$), the north half of the northeast quarter (N. $\frac{1}{2}$ NE. $\frac{1}{4}$), the southeast quarter of the northeast quarter (SE. $\frac{1}{4}$ NE. $\frac{1}{4}$), and the northeast quarter of the southeast quarter (NE. $\frac{1}{4}$ SE. $\frac{1}{4}$) of Section eleven (11), the west half of the west half (W. $\frac{1}{2}$ W. $\frac{1}{2}$) of Section twelve (12), and the northwest quarter of the northwest quarter (NW. $\frac{1}{4}$ NW. $\frac{1}{4}$) of Section Seventeen (17), Township fourteen (14) South, Range three (3) East of the Willamette Meridian; the west half of the northeast quarter (W. $\frac{1}{2}$ NE. $\frac{1}{4}$), the northeast quarter of the northeast quarter (NE. $\frac{1}{4}$ NE. $\frac{1}{4}$), the south half of the southeast quarter (S. $\frac{1}{2}$ SE. $\frac{1}{4}$), and lots three (3) and four (4), Section eighteen (18), and the east half of the southwest quarter (E. $\frac{1}{4}$ SW. $\frac{1}{4}$), the south half of the southeast quarter (S. $\frac{1}{2}$ SE. $\frac{1}{4}$) of Section twenty (20), the northwest quarter (NW. $\frac{1}{4}$), the west half of the southwest quarter (W. $\frac{1}{2}$ SW. $\frac{1}{4}$), the northeast quarter of the southwest quarter (NE. $\frac{1}{4}$ SW. $\frac{1}{4}$), the northwest quarter of the southeast quarter (NW. $\frac{1}{4}$ SE. $\frac{1}{4}$), the west half of the northeast quarter (W. $\frac{1}{2}$ NE. $\frac{1}{4}$), the southeast quarter of the northeast quarter (SE. $\frac{1}{4}$ NE. $\frac{1}{4}$), and the northeast quarter of the southeast quarter (NE. $\frac{1}{4}$ SE. $\frac{1}{4}$) of Section twenty-two (22), the east half of the

northwest quarter (E. $\frac{1}{2}$ NW. $\frac{1}{4}$), the southwest quarter of the northwest quarter (SW. $\frac{1}{4}$ NW. $\frac{1}{4}$), and the southwest quarter of the northeast quarter (SW. $\frac{1}{4}$ NE. $\frac{1}{4}$) of Section twenty-four (24), the northwest quarter of the northwest quarter (NW. $\frac{1}{4}$ NW. $\frac{1}{4}$) of Section twenty-seven (27), the west half of the northeast quarter (W. $\frac{1}{2}$ NE. $\frac{1}{4}$), the northeast quarter of the northeast quarter (NE. $\frac{1}{4}$ NE. $\frac{1}{4}$), the northwest quarter (NW. $\frac{1}{4}$), the north half of the southeast quarter (N. $\frac{1}{2}$ SE. $\frac{1}{4}$), and the north half of the southwest quarter (N. $\frac{1}{2}$ SW. $\frac{1}{4}$), of Section twenty-eight (28), in Township fourteen (14) South, Range four (4) East of the Willamette Meridian.

II.

That from and after the 12th day of August, 1902, the complainant still continued to be, and is now, the owner of the equitable title to all of said above described lands. [65]

III.

Your orator further shows unto your Honors that some time prior to the month of August, 1900, and for many years prior thereto, the above-described lands in said Linn County, State and District of Oregon, were part of the public domain of the United States and subject to entry and sale in conformity with the land laws of the United States.

IV.

Your orator further shows unto your Honors that some time during the year 1900, and prior to the month of May, the above-named defendants, Frederick A. Kribs, C. A. Smith, Charles J. Swanson, O. Judd Mealey, Will Mealey and John A. Thomp-

son, together with other persons to your orator unknown, entered into a conspiracy and agreement to defraud the Government of the United States out of the title to the above-described lands, and in and by said conspiracy and agreement it was understood and agreed that the said defendants, O. Judd Mealey, Will Mealey and John A. Thompson should solicit and procure persons to make applications and entries, together with and in addition to certain of themselves upon the lands above described, under the Act of Congress of June 3d, 1878, providing for the sale of timber lands in the States of California, Oregon, Nevada and in Washington Territory, at the United States Land Office at Roseburg, Oregon, and that the said O. Judd Mealey, Will Mealey and John A. Thompson should, prior to procuring and obtaining such persons to file upon said lands, as aforesaid, enter into an agreement with each and every of said persons in and by which said agreement each of said persons so filing on said lands promised and agreed that the title which he or she might acquire from the Government of the United [66] States should inure to the benefit of the said defendants Frederick A. Kribs, C. A. Smith, Charles J. Swanson or some of them, and that as soon as said applicants should be permitted to enter said lands so to be filed upon by him or her and a certificate should issue to such applicant, showing that such applicant had been permitted to enter said lands so filed upon and had made payment in full therefor, as required by law, then such applicant would thereupon and thereafter execute and deliver to the said defendant Frederick A. Kribs, C. A. Smith and Charles J. Swanson or

some of them, a warranty deed, conveying said lands to the said Frederick A. Kribs, C. A. Smith or Charles J. Swanson or some of them, and the said defendants, O. Judd Mealey, Will Mealey, and John A. Thompson, should promise each of said applicants upon behalf of themselves and said defendants Frederick A. Kribs, C. A. Smith, and Charles J. Swanson, to pay the respective applicants all expenses of filing and proof upon the lands applied for by such applicants and pay the price required to be paid the United States for said lands, all of such payments to be made by the said defendants named in this paragraph at the time proof and cash entries should be made.

V.

That thereafter, on and between the 8th day of *My*, 1900, and the 19th day of July, 1900, pursuant to said unlawful conspiracy and agreement, hereinbefore set forth, the defendants O. Judd Mealey, Will Mealey and John A. Thompson, solicited and procured the defendants hereinafter named, together with *on* William J. Lawrence, since deceased, to make applications to purchase and enter the land hereinafter described, under the Act of Congress of June 3d, 1878, providing for the sale of timber lands in the [67] States of California, Oregon, Nevada and in Washington Territory, at the United States Land Office at Roseburg, Oregon, and the said defendants O. Judd Mealey, and John A. Thompson, each also made an application to purchase and enter the hereinafter described lands under said Act above mentioned; and, pursuant to said unlawful conspiracy, each of said applicants to purchase and enter

said lands filed a statement in duplicate verified by the oath of each applicant, as required by law, and all of said applications were filed at the United States Land Office at Roseburg, Oregon, on the dates and in the manner hereinafter set forth:

Timber and Stone Sworn Statement No. 1143, by Richard F. Malone, for the northwest quarter of section 22, township 14 south, range 4 east of Willamette Meridian, filed July 12, 1900;

Timber and Stone Sworn Statement No. 1146, by William J. Lawrence, for the east $\frac{1}{2}$ of the southwest $\frac{1}{4}$ and the south $\frac{1}{2}$ of the southeast $\frac{1}{4}$ of section 20, township 14 south, range 4 east of the Willamette Meridian, filed July 12th, 1900;

Timber and Stone Sworn Statement No. 1144, by Alexander Gould, for the east $\frac{1}{2}$ of the northwest $\frac{1}{4}$ and the southwest $\frac{1}{4}$ of the northwest $\frac{1}{4}$ and the southwest $\frac{1}{4}$ of the northeast $\frac{1}{4}$ of section 24, township 14 south, range 4 east of the Willamette Meridian, filed July 12th, 1900;

Timber and Stone Sworn Statement No. 1142, by John J. Gilliland, for the northwest $\frac{1}{4}$ of section 28, township 14 south, range 4 east of the Willamette Meridian, filed July 12, 1900;

Timber and Stone Sworn Statement No. 1150, by Louis Maynard, for the west $\frac{1}{2}$ of the southwest $\frac{1}{4}$ and the northeast $\frac{1}{4}$ of the southwest $\frac{1}{4}$ and the northwest $\frac{1}{4}$ of the southeast $\frac{1}{4}$ of section 22, township 14 south, range 4 east of the Willamette Meridian, filed July 12th, 1900;

Timber and Stone Sworn Statement No. 1023, by O. Judd Mealey, for the southwest $\frac{1}{4}$ of section 26,

township 14 south, range 2 east of the Willamette Meridian, filed May 15, 1900;

Timber and Stone Sworn Statement No. 1106, by Joseph O. Mikalson, for the west $\frac{1}{2}$ of the east $\frac{1}{2}$ of section 10, township 14 south, range 3 east of the Willamette Meridian, filed June 14, 1900;

Timber and Stone Sworn Statement No. 1151, by James W. Rozell, for the north $\frac{1}{2}$ of the southeast $\frac{1}{4}$ and the north $\frac{1}{3}$ of the southwest $\frac{1}{4}$ of section 28, township 14 south, range 4 east of the Willamette Meridian, filed July 13, 1900; [68]

Timber and Stone Sworn Statement No. 1107 by John Thomas Parker, for the north $\frac{1}{2}$ of the northeast $\frac{1}{4}$ and the southeast $\frac{1}{4}$ of the northeast $\frac{1}{4}$ and northeast $\frac{1}{4}$ of the southeast $\frac{1}{4}$ of section 11, township 14 south, range 3 east of the Willamette Meridian, filed June 14, 1900;

Timber and Stone Sworn Statement No. 1111, by Samuel D. Pickens, for the west half of the southwest $\frac{1}{4}$ and the southeast $\frac{1}{4}$ of the southwest $\frac{1}{4}$ and the southwest $\frac{1}{3}$ of the southeast $\frac{1}{4}$ of section 11, township 14 south, range 3 east of the Willamette Meridian, filed June 14, 1900;

Timber and Stone Sworn Statement No. 1145, by Sidney H. Scanalan, for the west $\frac{1}{3}$ of the northeast $\frac{1}{4}$ and the northeast $\frac{1}{4}$ of the northeast $\frac{1}{4}$ of section 28, and the northwest $\frac{1}{4}$ of the northwest $\frac{1}{4}$ of section 27, township 14 south, range 4 east of the Willamette Meridian, filed July 12, 1900;

Timber and Stone Sworn Statement No. 1108, by Joseph Steingrandt, for the east $\frac{1}{2}$ of the east $\frac{1}{2}$ of section 10, township 14 south, range 3 east of the

section 10, township 14 south, range 3 east of the Willamette Meridian, filed June 14, 1900;

Timber and Stone Sworn Statement No. 1022, by John A. Thompson, for the northeast $\frac{1}{4}$ of section 26, township 14 south, range 2 east of the Willamette Meridian, filed May 15, 1900;

Timber and Stone Sworn Statement No. 1165, by Cornelius N. Tuthill, for the south $\frac{1}{2}$ of the southeast $\frac{1}{4}$ and lots 3 and 4, section 18, township 14 south, range 4 east of the Willamette Meridian, filed July 19, 1900;

Timber and Stone Sworn Statement No. 1148, by Richard C. Watkinds, for the west $\frac{1}{2}$ of the northeast $\frac{1}{4}$ and the southeast $\frac{1}{4}$ of the northeast $\frac{1}{4}$ and the northeast $\frac{1}{4}$ of the southeast quarter of section 22, township 14 south, range 4 east of the Willamette Meridian, filed July 12, 1900;

Timber and Stone Sworn Statement No. 1110, by Charles Wiley, for the west half of the west $\frac{1}{2}$ of section 12, township 14 south, range 3 east of the Willamette Meridian, filed June 14, 1900;

Timber and Stone Sworn Statement No. 1105, by William W. Billings, for the northwest $\frac{1}{4}$ of the northwest $\frac{1}{4}$ of section 17, and the north $\frac{1}{2}$ of the northeast $\frac{1}{4}$ and the southwest $\frac{1}{4}$ of the northwest $\frac{1}{4}$ of section 18, township 14 south, range 3 east of the Willamette Meridian, filed June 14, 1900.

VI.

Your orator further shows unto your Honors and alleges: That pursuant to said unlawful conspiracy and agreement each of said applicants to purchase and enter timber lands, mentioned and described in the last preceding paragraph of this Bill, with the

exception of the defendants O. Judd Mealey and John A. Thompson, prior to [69] making and filing his or her application to purchase and enter said lands made and entered into a contract and agreement with the said defendants O. Judd Mealey, Will Mealey, and John A. Thompson, whereby each of said applicants promised and agreed to purchase and enter said lands for the use and benefit of the defendants Frederick A. Kribs, C. A. Smith, and Charles J. Swanson, whom the said O. Judd Mealey, Will Mealey and John A. Thompson then and there represented and acted for, and each of said applicants further agreed that upon being permitted to enter and purchase the lands so applied for to thereupon and thereafter transfer, convey and set over said lands by warranty deed to the said Frederick A. Kribs, C. A. Smith and Charles J. Swanson or some of them, and the said defendants O. Judd Mealey, and John A. Thompson, prior to making their said applications and entries, hereinbefore mentioned, each entered into an agreement with the said defendants, C. A. Smith and Frederick A. Kribs, in and by which the said O. Judd Mealey and John A. Thompson each promised and agreed, upon being permitted to enter said lands so applied for and filed upon by him, to transfer, convey and set over said lands by warranty deed to the said defendants Frederick A. Kribs, C. A. Smith, or Charles J. Swanson; and in consideration of the foregoing agreements made by such applicants except the said O. Judd Mealey and John A. Thompson, the said O. Judd Mealey, Will Mealey and John A. Thompson, promised and agreed to pay each of

said applicants the sum of Fifty (\$50.00) Dollars, and pay all the expenses of filing and making final proof thereon, together with the purchase price of the lands applied for by each of said applicants; and the said defendant Frederick A. Kribs promised and agreed to pay all the expenses of filing and making final proof, together with the purchase [70] price of the lands included in the respective applications and entries of the said O. Judd Mealey and John A. Thompson.

And your orator further shows unto your Honors and alleges: That each of said applicants hereinbefore mentioned and described and upon the dates hereinbefore set forth, filed a written statement in duplicate which is hereinbefore set forth, *filed a written statement in duplicate which is hereinbefore designated as "Timber and Stone Sworn Statement,"* in which said written statements each of said applicants designated by legal subdivision the particular tract of land he or she desired to purchase, and set forth that the same was unfit for cultivation and valuable chiefly for its timber; that it was uninhabited, containing no mining or other improvements, nor, as such applicant verily believed, any valuable deposit of gold, silver, cinnabar, copper or coal, and that such applicant had made no other application under said Act, and that he or she did not apply to purchase the land above described on speculation, but in good faith to appropriate it *of* his or her own exclusive use and benefit, and that he or she had not directly or indirectly made any agreement in any way or manner with any person or persons whomsoever,

by which the title which he or she might acquire from the Government of the United States should inure to the benefit of any person except himself or herself, which said statement of each of said applicants was verified by the oath of the respective applicants before the Register or Receiver of the said Land Office at Roseburg, Oregon, or before some other officer authorized by law to administer such oath.

Your orator further shows unto your Honors and alleges: That upon the filing of said statements, as hereinbefore [71] set forth, the register of the said United States Land Office, at Roseburg, Oregon, posted a notice of each of said applications, as required by law, furnished each of said applicants a copy of such notice for publication and the said defendants O. Judd Mealey, Will Mealey and John A. Thompson, pursuant to said unlawful conspiracy and agreement hereinbefore mentioned, caused each of said notices to be duly and regularly published in a newspaper, as required by law, and after the expiration of such publication the said defendants O. Judd Mealey, Will Mealey, and John A. Thompson, furnished to the Register of said Roseburg Land Office satisfactory evidence that said notice of the application of each of said applicants had been duly published in a newspaper, as required by law, and procured each of said applicants to furnish satisfactory evidence to said Register that the said land included in each of said applications was unfit for cultivation and valuable chiefly for its timber, and that said land was unoccupied and without improvements either mining or agricultural, and that it apparently con-

tained no valuable deposit of gold, silver, cinnabar, copper or coal; and upon the submission of said evidence and proof so furnished and offered, and notwithstanding the facts as hereinbefore set forth, the officers of the said United States Land Office at Roseburg, Oregon, being ignorant thereof and having no means of knowing or ascertaining the same, did receive from each of said applicants the sum of \$400.00 as payment for the lands described in said respective applications, under the said Act of Congress of June 3d, 1878, at the rate of \$2.50 per acre, and permitted each of said applicants to enter the lands described in his or her respective applications, and issued to each of said applicants a certificate to the effect that such applicant had purchased [72] the land described therein and had made payment in full therefor, as required by law, which said entries, payments and certificates were permitted, made and issued on the cates and in the manner following, to wit:

Final Certificate No. 8510, Richard F. Malone, October 9th, 1900;

Final Certificate No. 8516, William J. Lawrence, October 9th, 1900;

Final Certificate No. 8508, Alexander Gould, October 9th, 1900;

Final Certificate No. 8511, John J. Gilliland, October 9th, 1900;

Final Certificate No. 8512, Louis Maynard, October 9, 1900;

Final Certificate No. 8419, O. Judd Mealey, October 9, 1900;

Final Certificate No. 8446, Joseph O. Mikalson, Au-

gust 27th, 1900;

Final Certificate No. 8517, James W. Rozell, October 9, 1900;

Final Certificate No. 8445, John Thomas Parker, August 27th, 1900;

Final Certificate No. 8444, Samuel D. Pickens, August 27, 1900;

Final Certificate No. 8509, Sidney H. Scanland, October 9th, 1900;

Final Certificate No. 8447, Joseph H. Steingrandt, August 27th, 1900;

Final Certificate No. 8422, John A. Thompson, August 16th, 1900;

Final Certificate No. 8513, Cornelius N. Tuthill, October 9th, 1900;

Final Certificate No. 9522, R. C. Watkins, October 9, 1900;

Final Certificate No. 8443, Charles Wiley, August 27, 1900;

Final Certificate No. 8442, William W. Billings, August 27th, 1900;

And your orator further shows unto your Honors that pursuant to said unlawful conspiracy to defraud the United States out of its said lands as aforesaid and pursuant to said unlawful agreements entered into by the said defendants O. Judd Mealey, Will Mealey, and John A. Thompson, with each of said applicants prior to making and filing applications for the purchase of the lands hereinbefore described, the said O. Judd Mealey, Will Mealey and John A. Thompson, at the time each of said applicants made proof before the of-

ficers of the United States Land Office at Roseburg, Oregon, as aforesaid, paid and advanced all the expenses and fees of each of said applicants and their respective witnesses, and paid, advanced and furnished the purchase money for the lands included in the application *fo* each of said applicants except [73] that the expense, fees and purchase price of the lands included in the applications of the said O. Judd Mealey and John A. Thompson were paid by the defendant Frederick A. Kribs and in truth and in fact the said Frederick A. Kribs, C. A. Smith and Charles J. Swanson, furnished and advanced all the moneys with which the fees, expenses and purchase moneys of the said applicants upon their said respective applications and entries, were paid; and thereupon each of said applicants executed and delivered to the defendant Frederick A. Kribs a warranty deed, purporting to transfer, convey and set over unto the said defendant, Frederick A. Kribs, the title to the lands included and described in their respective applications and entries; and in each of said deeds the applicants who were married were joined by their respective wives or husbands.

VIII.

And your orator further shows unto your Honors and alleges, that each of the applications and entries hereinbefore mentioned were made by the respective applicants and entrymen and entrywomen as agents of and for the use and benefit of the said defendants C. S. Smith, Frederick A. Kribs and Charles A. Swanson, and also that each and every of the statements and representations made by the respective applicants and entrymen and entrywomen aforesaid,

in each of their respective applications, and in each of their respective final proofs, hereinbefore mentioned and referred to, was and were false, fraudulent and untrue, by reason and because of the facts hereinbefore set forth and alleged; and by reason and because of the facts that each legal subdivision of the particular tract of land which he or she desired to purchase, and described in his or her application, and in his or her final proof, was not [74] unfit for cultivation, and was not valuable chiefly for timber, and such applicant did not verily believe that the same contained no valuable deposits of gold, silver, cinnabar, copper or coal, and in truth and in fact such applicant had made other applications under said Act, and he or she did apply to purchase the lands above described on speculation and not in good faith and not to appropriate them to his or her own exclusive use and benefit, and he or she had directly or indirectly made an agreement in some way and manner with some person or persons, by which the title which he or she might acquire from the Government of the United States should inure to the benefit of some person except himself or herself, and in truth and in fact the oath of each of the respective applicants to their respective applications and their respective final proofs was wilfully and corruptly false and perjured, as the said applicant and the other defendants in this case then and there well knew, to wit, at the time of the making of said false representations and statements in said applications and in said final proofs, and at the time of making their respective oaths.

IX.

And your orator further avers that the said false and fraudulent representations aforesaid were each and all of them made by the defendants herein with the intent to deceive and defraud the United States out of the use of, title to and possession of the lands hereinbefore described; and that your complainant and its officers empowered to act in the premises being ignorant of the falsity thereof, and having no means of ascertaining the [75] same, relied thereon and were induced thereby to and did, on the 9th day of July, 1902, and the 12th day of August, 1902, respectively, issue to each of said applicants to purchase and enter timber lands as hereinbefore set forth, a patent purporting to convey to the respective applicants the land described in said application and proof to the applicant who applied therefor as aforesaid.

X.

And your orator further avers that by reason of such false and fraudulent representations and unlawful and corrupt practices of the said defendants, all of said patents hereinbefore mentioned and described are void and ought to be cancelled and annulled and held for naught.

XI.

And your orator further shows unto your Honors, that all of said lands patented to the defendants as hereinbefore set forth, were applied for, entered and filed upon by each of said defendants for the use and benefit of the defendants Frederick A. Kribs, C. A. Smith, and Charles J. Swanson, and that before said lands were patented as aforesaid, to the respective

defendants, each of said defendants conveyed the lands respectively patented to him or her, to the defendant Frederick A. Kribs as hereinbefore alleged, and that the said defendant Frederick A. Kribs and his wife executed, acknowledged and delivered to the defendant C. A. Smith, on the 24th day of October, 1904, a deed which purported to convey to the said C. A. Smith a three-quarter undivided interest in and to the said lands patented as hereinbefore set forth and on the 28th day of December, 1904, the defendant Frederick A. Kribs and his wife executed, acknowledged and delivered to the defendant Charles J. Swanson, a deed [76] which purported to convey to the said Charles J. Swanson, a one-quarter undivided interest in and to all of the lands patented to the respective defendants as hereinbefore set forth.

And your orator further charges and avers that in each and every instance, and as to each and every party in this paragraph as above mentioned, he took and received said respective title deeds with full notice of the fraud so perpetrated upon your orator as alleged in this Bill of Complaint and without having paid or given any consideration therefor except that the said defendants Frederick A. Kribs, C. A. Smith and Charles J. Swanson, paid and advanced all the fees and expenses of the respective applicants to purchase and enter said lands and paid the purchase money received by the Government of the United States therefor, and paid to each of such applicants the sum of Fifty (50.00) Dollars and further paid the said defendants O. Judd Mealey, Will Mealey and J. A. Thompson certain sums of

money, the amounts of which are unknown to your orator for soliciting and procuring said persons to apply for and enter and file upon said lands; all of which said payments were made under agreements made with the respective persons prior to the time at which said applications and entries were made; and said deeds were executed, acknowledged and delivered, taken and received, respectively, by the said defendants as mentioned hereinbefore in this Bill of Complaint for the purpose of effecting the objects and purposes of said unlawful conspiracy hereinbefore described, to prevent the United States from recovering said lands and that each of such conveyances and deeds and pretended purchases is void in equity and should be so declared in favor of the United States. And each of [77] such purchases and deeds is void in equity, and should be so declared in favor of the United States and any purchases or pretended purchases, or encumbrances, or liens, or pretended encumbrances or apparent liens alleged to be existing in law or in equity thereon, upon such lands or any portion thereof, should be declared fraudulent by the decree of this Honorable Court.

XII.

That thereafter the said defendant, C. A. Smith, intending further to defraud and deceive this complainant and to *corruptly* and fraudulently prevent complainant from recovering said lands hereinbefore described complied with the forms of the laws of the State of Minnesota relating to the organization of private corporations and on or about the 24th day of May, 1906, caused to be filed a certificate of the

articles of incorporation in the office of the Secretary of State in and for said State of Minnesota. That said articles, or certificate of incorporation was executed by the said C. A. Smith, his wife Johanna A. Smith, and his son Vernon Smith, as incorporators, and it was stated in the said articles of incorporation that the name by which the corporation sought to be organized should be known, should be Linn & Lane Timber Company.

That thereafter the said defendant, C. A. Smith, complied with the forms of the laws of the State of Minnesota necessary to authorize the said Linn & Lane Timber Company, to transact business as a corporation in the State of Minnesota. That the purpose of the formation of said corporation was to form a holding company for lands in the State of Oregon owned or claimed by the said defendant C. A. Smith. That your orator is informed and believes that all stock [78] of said corporation, if any was ever issued, to persons other than the said C. A. Smith, was and is held for the use and benefit of the said defendant, C. A. Smith. That said corporation is named in the title of this amended bill as a defendant herein.

That thereafter the defendant, C. A. Smith, for the purpose, among others, of fraudulently and corruptly preventing complainant from recovering the lands hereinbefore described on or about the 25th day of June, 1906, caused to be filed in the office of the Secretary of State of the State of Oregon, a certified copy of the articles and certificate of incorporation of said Linn & Lane Timber Company,

together with what purported to be the appointment of the defendant, F. A. Kribs as attorney in fact of said corporation in and for the State of Oregon; and ever since said time that the said defendants C. A. Smith and F. A. Kribs, have and do now pretend that the said defendant, F. A. Kribs, was and is such attorney in fact in and for the State of Oregon, of said Linn & Lane Timber Company.

XIII.

That thereafter, on or about the 9th day of September, 1908, the defendant, C. A. Smith, caused to be filed for record with the Recorder of Conveyances for Linn County, Oregon, two certain deeds purporting to have been executed by Charles J. Swanson, and Christina Swanson, his wife, and the said C. A. Smith and Johanna A. Smith, his wife, bearing dates, respectively, the 28th day of May, 1907, and the 4th day of June, 1906, each purporting to convey to the defendant, Linn & Lane Timber Company, the lands hereinbefore described. And your orator further avers and alleges that said deed of the said Charles J. Swanson, and his [79] said wife, Christina Swanson, was made and executed to the said Linn & Lane Timber Company without consideration and with full knowledge upon the part of said corporation of the fraudulent practice hereinbefore set forth and for the use and benefit of the said defendant, C. A. Smith, and for the corrupt and fraudulent purpose of preventing your complainant from recovering said land and that the said deed of the said defendant, C. A. Smith and Johanna A. Smith, his wife, was executed to the said defendant Linn & Lane Timber Company for the corrupt and

fraudulent purpose of preventing complainant from recovering said lands and without consideration paid therefor, and with full knowledge upon the part of said corporation of the fraudulent practice hereinbefore set forth and for the use and benefit of the said defendant C. A. Smith, and that said deed was not executed at the date which it bears upon its face, but was executed by the said defendant, C. A. Smith and Johanna A. Smith, his wife, long after the commencement of this suit and shortly prior to the time the same was offered for record as aforesaid, and that your orator had no knowledge or notice of said deeds of the said Charles J. Swanson, and his wife, Christina Swanson, and the said C. A. Smith and Johanna A. Smith, his wife, until after the same were offered for record as aforesaid, and the existence of the same was concealed from your orator up until the time they were offered for record as aforesaid, for the corrupt and fraudulent purpose of preventing complainant from recovering said lands, and your orator had no means of discovering the existence of said last mentioned deeds until they were so offered for recording.

XIV.

And your orator further avers that the false and fraudulent representations and corrupt and unconscionable [80] practices made and engaged in by the defendants as hereinbefore set forth, were all made with the intent and for the purpose of deceiving and defrauding the United States out of the use of, title to, and possession of, the lands hereinbefore described, and that your complainant relied upon said false and fraudulent representations so made

as aforesaid, and by reason of such false and fraudulent representations and unlawful and corrupt practices of the said defendants, all of said patents hereinbefore mentioned and described are void and ought to be canceled and annulled and held for naught, and any and every purchase or pretended purchase or encumbrance or lien or pretended encumbrance or apparent lien alleged by defendants or any of them to be existing at law or in equity upon the lands hereinbefore described or any portion thereof should be declared void by the decree of this Honorable Court.

XV.

Your orator further shows unto your Honors that immediately prior to the commencement of this suit your orator caused diligent search and inquiry to be made for the purpose of ascertaining the existence of any and all right, title and interest in any manner asserted or claimed in or to any of said lands, together with the names of any and all parties so asserting or claiming the same, and particularly those claiming to have the legal title thereto, by succession from the aforesaid original patentees, or otherwise, for the purpose of setting forth any and all such alleged right, title and interest in the original bill of complaint herein, and making all persons and corporations claiming or asserting the same, parties defendant to this suit. [81]

And in that behalf your orator caused inquiries to be made of all persons known to your orator who would be likely to possess any information upon the subject aforesaid, and caused diligent and accurate search to be made of the public records of Linn

County, Oregon, wherein all of said lands are situated (and being the only public records known to your orator to contain any information upon said subject), including the registry records of said county pertaining to mortgages, deeds and other conveyances, and the records of the assessor's and sheriff's offices of said county concerning the assessment of said lands and the payment of taxes thereon.

That such search and inquiry did not reveal any right, title or interest in or to any of said lands, in favor of, or claimed or asserted by, said Linn and Lane Timber Company, nor the existence of said Linn and Lane Timber Company; on the contrary, said search and inquiry disclosed that the defendants alleged in complainant's original bill of complaint to be claiming certain interests and estates in said lands were the only persons asserting or claiming any right, title or interest in or to any of said lands, and further disclosed that they, the said original defendants, had continuously asserted such claims subsequent to the time said alleged deeds of conveyance to said Linn and Lane Timber Company purport to have been executed, and down to and until the time of the filing of the original bill of complaint herein, that is to say, the registry records of said county disclosed that the legal title to all of said lands was in the aforesaid alleged grantors of said Linn [82] and Lane Timber Company, and the records of the assessor's and sheriff's offices of said county disclosed that all of said lands were assessed in the names of, and the taxes assessed thereupon were paid by, said alleged grantors of said Linn and Lane Timber Company; and said

inquiries made by and on behalf of your orator as aforesaid revealed the fact to be, and your orator alleges, that all of the lands described in this amended bill of complaint now are, and at all times have been, unoccupied, and none of said lands have ever been in the actual occupation or possession of any person or corporation, or at all.

And your orator says that if said Linn and Lane Timber Company ever acquired any alleged right, title or interest in or to any of said lands, it has at all times thereafter until September 9, 1908, permitted the public records of said Linn County to show that its alleged grantors held the legal title to all of said lands, and has at all times permitted all of said lands to be assessed in the names of its aforesaid grantors, and has further permitted said records to show that the taxes assessed upon all of said lands were paid by its aforesaid alleged grantors; and your orator further says that one of the said alleged grantors of said Linn and Lane Timber Company, to wit, C. A. Smith, in whose name a large part of said lands have been assessed and taxes thereon paid as aforesaid, was one of the incorporators of said Linn and Lane Timber Company as aforesaid, and at all times has been and still is the President thereof.

By reason of the premises your orator was kept in ignorance of any and all pretended rights and interests of said Linn and Lane Timber Company in or to any of said [83] lands, until apprised thereof by the filing of that certain plea interposed herein on the 5th day of September, 1908, by certain of the original defendants herein, whereby the afore-

said alleged rights and interests of said Linn and Lane Timber Company are set forth; and further by reason of the premises your orator was induced to believe, and at all times until apprised to the contrary as aforesaid did believe, that no right, title or interest of any kind or nature was asserted or claimed by any person or corporation other than as set forth in the original bill of complaint herein.

FORASMUCH, THEREFORE, as you orator is without adequate remedy in the premises, except in a court of equity where such matters are properly relievable, and to the end, therefore, that your orator may have that relief which may be obtained in a court of equity and in this court having jurisdiction thereof under the aforesaid facts as alleged, and that the defendants and each of them may answer the premises and show, if he or she can, why your complainant should not have the relief herein prayed for;

Your orator prays and requests of Your Honors to grant unto your complainant a writ of subpoena to be directed to said defendant, Linn and Lane Timber Company, and to such defendants as have not yet been served with process herein and each of them, commanding him or her at a day certain, and under a penalty therein to be limited to personally appear before this Honorable Court then and there well, true and direct and perfect answer make to all and singular the premises, but not under oath or affirmation, the benefit whereof is hereby expressly waived, and to stand, perform and abide by such order and decree as may be made against them in the premises [84] as to your Honors shall seem meet

and agreeable in equity and *at* the defendants herein that have been heretofore served with process or have heretofore appeared herein shall make like answer at a day certain to be named by your Honors under like conditions, that your complainant may have such further and other relief in the premises as the nature of the circumstances may require and particularly that your orator may have a decree canceling and annulling and setting aside all liens and encumbrances and pretended liens and encumbrances upon said lands, and divesting the defendants, and each of them, of and from all right, title, estate in law or equity and of all claim or interest of whatsoever kind or nature that they or any of them may assert thereto, and in and about the premises may make such further orders or decree as may be meet and agreeable to equity, and that your complainant may have its costs in this suit, and recover such damages and penalties herein as to your Honors and circumstances may seem to warrant and as may seem meet and agreeable to equity.

CHARLES J. BONAPARTE,

Attorney General of the United States.

JOHN McCOURT,

United States Attorney for the District of Oregon.

TRACY C. BECKER,

Special Assistant to the Attorney General.

United States of America,

District of Oregon,—ss.

I, John McCourt, being first duly sworn, on oath depose and say that I am United States Attorney for the District of Oregon, and that the facts set forth

in the foregoing bill of complaint are true as I verily believe.

JOHN McCOURT. [85]

Subscribed and sworn to before me this 3d day of November, 1908.

[Seal]

B. AMY,

Notary Public for Oregon.

Due, legal and timely service of the foregoing Amended Bill of Complaint, by copy duly certified to by John McCourt, United States Attorney for the District of Oregon, is hereby admitted at Portland, Oregon, this 4th day of November, 1908.

DOLPH, MALLORY, SIMON & GEARIN,

Per M.

Attys. for _____.

ALBERT H. TANNER,

Attys. for _____.

L. H. TARPLEY,

Attys. for _____.

Filed November 16, 1908. G. H. Marsh, Clerk.

[86]

And afterwards, to wit, on Monday, the 16th day of November, 1908, the same being the 37th judicial day of the regular October, 1908, term of said court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge, presiding—the following proceedings were had in said cause, to wit: [87]

[**Order Directing Issuance of Subpoena Ad Respondendum to Linn & Lane Timber Co., etc.**]

(Title of Court and Cause.)

Now, at this day, comes the plaintiff by Mr. John McCourt, United States Attorney, and the defendants C. A. Smith and Charles J. Swanson, by Mr. John M. Gearin, of counsel, and the defendant Frederick A. Kribs, by Mr. Albert H. Tanner, of counsel: Whereupon, it appearing to the Court that the plaintiff has filed an Amended Bill of Complaint herein, in which the Linn and Lane Timber Company is made a party defendant in addition to the defendants named in the original Bill of Complaint on motion of said plaintiff, IT IS ORDERED that a Subpoena ad Respondendum, returnable as provided by the Equity Rules on the Rule Day in December, 1908, issue to said defendant, Linn & Lane Timber Company. And it is further ordered that the remaining defendants in this cause answer, demur or plead to said Amended Bill of Complaint within thirty days from this date.

CHAS. E. WOLVERTON,
Judge.

Filed November 16, 1908. G. H. Marsh, Clerk.

[88]

And afterwards, to wit, on the 16th day of November, 1908, there was issued out of said court a Subpoena ad Respondendum, which with the marshal's return thereon, in words and figures, as follows, to wit: [89]

[Marshal's Return to Subpoena Ad Respondendum.]

United States of America,
District of Oregon,—ss.

I, Charles J. Reed, United States Marshal for the District of Oregon, hereby certify that I received the within writ of subpoena ad respondendum on the 18th day of November, 1908, and that I served the same upon the 18th day of November, 1908, within the State and District of Oregon, and within Multnomah County thereof, upon the within named defendant, Linn and Lane Timber Company, a corporation, by personally delivering to Frederick A. Kribs in person, as attorney in fact and authorized agent of said Linn and Lane Timber Company, a true copy of said subpoena ad respondendum, duly and regularly certified to be such copy by G. H. Marsh, Clerk of the Circuit Court of the United States for the District of Oregon, together with a true copy of the bill of complaint herein, duly and regularly certified to be such copy by John McCourt, United States Attorney for the District of Oregon, the said Frederick A. Kribs being then and there a citizen and resident of the State of Oregon, residing in Portland, Multnomah County, Oregon, and being the duly appointed, true and lawful attorney in fact and authorized agent of the Linn and Lane Timber Company, a corporation, defendant, authorized to make and accept service of all writs, processes and summonses in any action, suit or proceeding in any of the courts of the State of Oregon or United States Courts therein, and upon whom all lawful writs, processes and

summonses may be served to the same effect as though the said Linn and Lane Timber Company existed in the State of Oregon, requisite and necessary to give competent and complete jurisdiction of said Linn and Lane Timber Company to any of said Courts.

In witness whereof I have hereunto set my hand this 20th day of November, 1908.

CHARLES J. REED,

U. S. Marshal for District of Oregon.

Leonard Becker,

Deputy. [90]

(Title of Court and Cause.)

**Subpoena Ad Respondendum [to Linn & Lane
Timber Co.]**

The President of the United States of America, to
Linn and Lane Timber Company, Greeting:

You and each of you are hereby commanded that you be and appear in said Circuit Court of the United States, at the courtroom thereof, in the city of Portland, in said District, on the first Monday of December next, which will be the 7th day of December, A. D. 1908, to answer the exigency of an Amended Bill of Complaint exhibited and filed against you in our said Court, wherein The United States of America is complainant and you are defendant, and further to do and receive what our said Circuit Court shall consider in this behalf, and this you are in no wise to omit under the pains and penalties of what may befall thereon.

And this is to Command you, the Marshal of said District, or your Deputy, to make due service

of this our Writ of Subpoena and to have then and there the same.

Hereof fail not.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 16th day of November, in the year of our Lord one thousand nine hundred and eight and of the Independence of the United States the one hundred and thirty-third.

G. H. MARSH,
Clerk.

By J. W. Marsh,
Deputy Clerk.

[Seal U. S. Circuit Court, District of Oregon.]

MEMORANDUM PURSUANT TO EQUITY
RULE NO. 12 OF THE SUPREME COURT
OF THE UNITED STATES:

The defendant is to enter his appearance in the above-entitled suit in the office of the Clerk of said Court on or before the day at which the above writ is returnable; otherwise the complainant's bill therein may be taken *pro confesso*.

[Endorsed]: No. 3319. In the Circuit Court of the United States, for the District of Oregon. In Equity. United States vs. C. A. Smith et al. Subpoena ad Respondendum. Filed Novemembr 20, 1908. G. H. Marsh, Clerk U. S. Circuit Court, District of Oregon. [91]

And afterwards, to wit, on Wednesday, the 2d day of December, 1908, the same being the 50th judicial day of the regular October, 1908, term of said court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge presiding, the following proceedings were had in said cause, to wit: [92]

[Order Allowing Defendants Time to Plead to Amended Bill.]

(Title of Court and Cause.)

Now, at this day, come the plaintiff in the above-entitled cause by Mr. John McCourt, United States Attorney, and the defendants C. A. Smith and Charles J. Swenson by Mr. John M. Gearin, of counsel: Whereupon, on motion of said defendants, IT IS ORDERED that all defendants be, and they are hereby, allowed until Monday, February 1, 1909, in which to plead to the amended bill of complaint herein. [93]

And afterwards, to wit, on the 29th day of December, 1908, there was duly filed in said court a praecipe for appearance of defendant, Linn and Lane Timber Company, in words and figures as follows, to wit: [94]

[Praecipe for Entry of Appearance for Linn & Lane Timber Co.]

(Title of Court and Cause.)

To the Clerk of the Above-entitled Court:

You will please enter our appearance as solicitors

and counsel for the defendant, the Linn & Lane Timber Company, in the above-entitled cause.

Dated January 4, 1909.

JOHN LIND.

A. UELAND.

W. M. JEROME.

JNO. M. GEARIN.

DOLPH, MALLORY, SIMON & GEARIN.

Notices and copies in the above-entitled cause may be served on each of the undersigned by delivering the same to John M. Gearin, Esq., at his office in the Mohawk Building, Portland, Oregon.

JOHN LIND,

A. UELAND,

W. M. JEROME,

Solicitors and Counsel for Defendant the Linn & Lane Timber Company.

Notice of Appearance. Filed December 29, 1908.
G. H. Marsh, Clerk U. S. Circuit Court, District of Oregon. [95]

And afterwards, to wit, on the 29th day of January, 1909, there was duly filed in said court an Answer of C. A. Smith et al. to the Amended Bill of Complaint, in words and figures as follows, to wit: [96]

[Joint and Several Answers of Charles A. Smith et al. to Amended Bill.]

(Title of Court and Cause.)

The joint and several answers of Charles A. Smith, Charles J. Swanson and Frederick A. Kribs, defend-

ants, to the amended bill of complaint of the United States of America, the complainant.

These defendants respectively now and at all times hereafter saving and reserving to themselves all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said amended bill of complaint contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering say:

FIRST. These defendants respectively deny that Frederick A. Kribs, C. A. Smith, Charles J. Swanson, O. Judd Mealey, Will Mealey, John A. Thompson, or any of them, either together with other persons or otherwise, ever entered into a conspiracy or agreement to defraud the complainant out of the title to the lands described in the amended bill, or any of said lands. And these defendants respectively say it is not true that is was ever understood or agreed between the [97] persons named in this paragraph, or any of them, that O. Judd Mealey, Will Mealey and John A. Thompson, or any of them, should solicit or procure any person to make application for or entry on any of said land under any Act of Congress or otherwise; or that said O. Judd Mealey, Will Mealey and John A. Thompson, or any of them, should procure or obtain from any person filing on any of said lands any agreement or promise that the title which such person might acquire from the complainant should inure to the benefit of Frederick A. Kribs, or C. A. Smith, or Charles J. Swanson;

or that any person after filing on any of said lands and receiving certificate that he had been permitted to file thereon, should or would execute or deliver to Frederick A. Kribs, or C. A. Smith, or Charles J. Swanson, any deed or other conveyance of any of said lands; or that O. Judd Mealey, Will Mealey and John A. Thompson, or any of them, should promise any person to pay any expense of filing, or of making final proof on any of said lands, or the price required to be paid to the complainant for any of said lands, or any part of such expense or purchase price.

SECOND. These defendants respectively have no reason to doubt, and therefore believe, that applications to enter and purchase the several tracts of land described in the amended bill, under the Act of Congress in said bill referred to, were made by the several entrymen in said amended bill named, at the United States Land Office at Roseburg, Oregon, at or about the times in said amended bill stated, and that each application was verified by the oath of the person making such application, and filed on the date mentioned in the amended bill, and that each application was for the land in that behalf described in said amended bill, except that the land applied for by O. Judd Mealey was in Range 2 East, and the land applied for by Joseph Steingrandt was in Section 10, Township 14 South, Range 3 East.

THIRD. These defendants respectively do not know and cannot set forth as to their or either of their belief or otherwise whether or not it is alleged or is the fact that O. Judd Mealey, Will Mealey and John A.

Thompson, or any of them, solicited or procured any of said entrymen to make any of the aforesaid applications to purchase and enter [98] said lands, and therefore leave the complainant to make such proof thereof as it shall be able to produce.

FOURTH. These defendants respectively say it is not true that any of said applicants, prior to making or filing his application to purchase or enter said land, made a contract or agreement with O. Judd Mealey, Will Mealey and John A. Thompson, or any of them, whereby such applicant promised or agreed to purchase or enter said lands, or any part of the same, for the use or benefit of Frederick A. Kribs, C. A. Smith, or Charles J. Swanson; or that O. Judd Mealey or John A. Thompson, prior to making or filing his said application agreed to transfer, convey or set over any of said land, to Frederick A. Kribs, C. A. Smith, or Charles J. Swanson, or entered into any agreement with Frederick A. Kribs, C. A. Smith or Charles J. Swanson to transfer, or convey, or set over any of said lands to said Frederick A. Kribs, C. A. Smith or Charles J. Swanson. And these defendants respectively say it not true that prior to the making or filing of said applications, Frederick A. Kribs promised to pay any expense of filing, or of making final proof, or the purchase price on or for any of the lands entered by O. Judd Mealey or John A. Thompson.

FIFTH. These defendants respectively do not know and cannot set forth as to their or either of their belief or otherwise whether or not it is alleged or is the fact that O. Judd Mealey, Will Mealey or

John A. Thompson promised or agreed to pay any of said applicants the sum of \$50, or any other sum, or the expense of filing or of making final proof on any of said lands, or the purchase price, for any of said lands, or any part of such expense or purchase price, and these defendants therefore leave the complainant to make such proof thereof as it shall be able to produce.

SIXTH. These defendants respectively have no reason to doubt, and therefore believe that the Timber and Stone Sworn Statements mentioned in the amended bill, contained and set forth, respectively, the several matters which in that behalf are in said amended bill specified, but for greater certainty these defendants crave leave to refer to said statements when produced. [99]

SEVENTH. These defendants respectively have no reason to doubt, and therefore believe, that upon filing the aforesaid statements, the Register of said United States Land Office posted a notice of each application as required by law, and furnished each applicant a copy of such notice for publication in a newspaper as required by law, and that satisfactory evidence that said notices had been so published in a newspaper was furnished to said Register, and that the applicants, respectively, furnished satisfactory evidence to said Register that the land covered by his application or entry was unfit for cultivation and valuable chiefly for timber, and that it was unoccupied and without improvement, either mining or agricultural, and that it apparently contained no valuable deposits of gold, silver, cinnebar,

copper or coal; and that upon submission of such proof the officers of said Land Office received from each applicant \$400 as payment for the land described in the application of such applicant at the rate of \$2.50 per acre, and permitted each applicant to enter the land described in his application, and issued to each applicant a certificate of purchase, as stated in said amended bill, but for greater certainty as to said final proofs and certificates of purchase these defendants crave leave to refer to the same when produced.

EIGHTH. These defendants respectively do not know and cannot set forth as to their or either of their belief or otherwise whether or not it is alleged or is the fact that O. Judd Mealey, Will Mealey or John A. Thompson caused any of the notices referred to in the foregoing paragraph (except the notices furnished to O. Judd Mealey and John A. Thompson) to be published in a newspaper, or furnished to the Register of said Land Office evidence that any of said notices (except the notices furnished to said Mealey and Thompson), had been published in a newspaper, or procured any of the applicants to furnish any evidence to said Register, and these defendants therefore leave the complainant to make such proof thereof as it shall be able to produce.

NINTH. These defendants respectively say that defendant Frederick A. Kribs resided in the State of Oregon during the years 1900 to 1903, both inclusive, and that during this period he was engaged in buying and selling timber lands situated in the States of Oregon and [100] California, and that

during said period defendant Charles A. Smith resided in the City of Minneapolis, in the State of Minnesota; that on or about the first day of January, 1900, it was agreed between said Kribs and Smith that said Kribs might from time to time submit to said Smith lists of timber lands in said Oregon and California, acquired or bargained for by him, the said Kribs, together with information concerning the timber on such lands, and the price paid or bargained to be paid for the same by said Kribs, and that said Smith might thereupon purchase the lands so submitted at the price paid or bargained to be paid for the same by said Kribs, with a reasonable amount per acre added to such price, which amount to be added was thereafter fixed and agreed upon by said Kribs and Smith to be the sum of twenty-seven and one-half cents per acre; that said agreement was modified on the 21st day of December, 1901, so that the price to be paid by said Smith thereafter under said agreement was to be fifty cents per acre in addition to the price paid or bargained to be paid by said Kribs for such lands, and said agreement was again modified on the 5th day of December, 1902, so that the price to be paid by said Smith under said agreement during the following twelve months was to be thirty cents per acre in addition to the price paid or bargained to be paid by said Kribs for such lands; that said Smith being a large purchaser of timber lands in said States during said period, it was considered that if it should be generally known in any locality that said Smith was purchasing timber lands in such locality such knowledge would tend to unduly advance

prices, and with a view of acquiring timber lands at a reasonable price, it was further understood and agreed between said Kribs and Smith, that the latter might designate persons other than himself in whose name title might be taken to such lands as said Smith might purchase pursuant to said agreement.

TENTH. These defendants respectively say that between the 17th day of April and the 13th day of October, 1900, said Frederick A. Kribs purchased from the entrymen named in the amended bill, respectively, at the price of \$4.75 per acre, the land for which said entrymen had theretofore respectively made and filed the timber and stone sworn statements described in the amended bill, and for said consideration then paid to said entrymen, they respectively conveyed [101] to said Kribs, the wives of the married entrymen joining, the lands covered by their respective entries, and said conveyances were in each instance by deed in which the entrymen covenanted that he was seized in fee simple and that he would warrant and defend the premises conveyed against all lawful claims whatsoever. These defendants respectively say that thereafter the said Frederick A. Kribs offered the lands so conveyed to him to said C. A. Smith in accordance with the aforesaid agreement between them, and said Smith accepted said lands, and paid for the same \$4.75 per acre, and twenty-seven and one-half cents per acre additional, in accordance with the said agreement, which was then the fair and full value of said lands, and having so accepted said lands and paid for the same, said Smith, in accord-

ance with the said agreement, directed an undivided one-fourth interest in said lands to be conveyed to Charles J. Swanson, and the remaining three-fourths interest to himself, and in accordance with such direction said Kribs and his wife executed and delivered to said Smith a deed, conveying to him an undivided three-fourths interest in said lands, and also executed and delivered to said Swanson a deed conveying to him an undivided one-fourth interest in said lands, and in each said deeds said Kribs covenanted that he was seized in fee simple of said lands, and had good right to sell and convey the same, and that he would warrant and defend the same against all persons lawfully claiming or to claim the whole or any part thereof.

ELEVENTH. These defendants respectively say that they, respectively, had no notice or knowledge of any of the alleged conspiracies, frauds, or irregularities complained of in the amended bill prior to the commencement of this suit, and that each in accepting and paying for each deed, executed and delivered to him as stated in the foregoing paragraph, acted in good faith, believing that the grantor in such deed could then rightfully and lawfully sell and convey the lands covered by such deed.

TWELFTH. These defendants respectively do not know and cannot set forth as to their or either of their belief or otherwise whether or not it is alleged or is the fact that any statement or representation [102] in any of the applications or final proofs referred to in the amended bill was false, or fraudulent, or untrue, or made with intent to deceive or defraud the complainant out of the use of,

or title to, or possession of, any of said lands, and these defendants therefore leave complainant to make such proof thereof as it may be able to produce.

THIRTEENTH. These defendants respectively deny that any of the applications or entries referred to in the amended bill of complaint was made by any of said applicants and entrymen as agent of, or for the use or benefit of, any of these defendants.

FOURTEENTH. These defendants respectively believe that on the 9th day of July, 1902, complainant issued a patent to each of the following named applicants, to wit: O. Judd Mealey, Joseph O. Mikalson, John Thomas Parker, Samuel D. Pickens, Joseph H. Steingrandt, John A. Thompson, Charles Wiley and William W. Billings, and that on the 12th day of August, 1902, complainant issued a patent to each of the other said applicants, and that complainant thereby granted and conveyed to each applicant the land covered by his said application and entry.

FIFTEENTH. These defendants respectively say it is not true that any of the deeds hereinbefore referred to was without consideration, or that any of these defendants paid or advanced to any of said entrymen any fee or expense, or any of the purchase money paid to the complainant, or any other sum, except that said Kribs paid said entrymen the consideration for their deeds to him as hereinbefore stated. And these defendants respectively say it is not true that any deed hereinbefore referred to was given to prevent complainant from recovering any of the lands described in the amended bill.

SIXTEENTH. These defendants respectively say that on or about the 31st day of May, 1906, defendant, the Linn and Lane Timber Company, was duly organized as a corporation under the general laws of the State of Minnesota, and its certificate of incorporation was executed by Charles A. Smith, Johanna A. Smith, and John Lind, and was recorded in the office of the Secretary of State for the said State of Minnesota on May 24, 1906, but said certificate was not executed by [103] Vernon Smith. And these defendants respectively say that said company was not organized for any purpose except as stated in said certificate of incorporation in the following words, to wit: "To buy, hold and sell timber lands and tenements in the United States of America and to conduct forestry, mining and agricultural operations on the same; to carry on logging operations, and buy, sell, store and transport logs and other forest products for itself and others; to build and operate mills for the manufacture of lumber and other wood and forest products; to construct and operate dams, sluices, ditches, flumes, chutes, booms, tramways and other appliances for irrigation and for carrying on the mining, agricultural, logging and manufacturing operations of the corporation; to develop electric energy and other power for the operation of its works and the transportation of its products and for sale."

SEVENTEENTH. These defendants respectively say it is not true that said Linn and Lane Timber Company was organized by C. A. Smith or any other person with intent to defraud or deceive complainant, or to prevent complainant from recov-

ering any of the lands described in the amended bill.

EIGHTEENTH. These defendants respectively say that on or about the 25th day of June, 1906, the said Linn and Lane Timber Company caused to be filed in the office of the Secretary of State for the State of Oregon a certified copy of its said certificate of incorporation, and a power of attorney constituting and appointing Frederick A. Kribs as its attorney in fact and agent in and for the State of Oregon, but these defendants respectively say it is not true that C. A. Smith or any other person caused such certified copy or such power of attorney to be filed in said office for the purpose of preventing complainant from recovering any of the lands described in said amended bill.

NINETEENTH. These defendants respectively admit that since said certificate and power of attorney were so filed in the office of the Secretary of State for said State of Oregon, C. A. Smith and F. A. Kribs have pretended and claimed that said Kribs has been and is attorney in [104] fact in and for said State of Oregon for said company.

TWENTIETH. These defendants respectively say that said Linn and Lane Timber Company was organized with a capital stock of one hundred thousand dollars, divided into one thousand shares of one hundred dollars each; that on the 4th day of June, 1906, defendant Charles A. Smith and Johanna A. Smith, his wife, executed and acknowledged three certain deeds in which said Company was named as grantee, all dated on said day; that one of said deeds was for the lands described in the amended

bill and certain other lands in Linn County, Oregon, and is one of the deeds referred to in paragraph XIII of the amended bill; that one of said three deeds was for certain lands in Lane County, Oregon, then owned by said Smith, and one was for certain lands in Douglass County, Oregon, then also owned by said Smith; that at a meeting of the board of directors of said Company, held at the City of Minneapolis, in the State of Minnesota, on the 9th day of June, 1906, said Charles A. Smith offered to convey to said Company the lands described in said three deeds and to accept as a consideration for such conveyance the said capital stock of said company, which offer was on said day, and at said meeting accepted by said company, and pursuant thereto said three deeds were on said date delivered by said Charles A. Smith to said company, and the said capital stock of said company was at the same time issued by said company in accordance with directions given by said Charles A. Smith, as follows: One share thereof to Johanna A. Smith, one share thereof to John Lind, and nine hundred and ninety-eight shares thereof to said Charles A. Smith; that in order to perfect the title to the lands which said Smith agreed to convey to said company for said stock, said Smith, on May 28, 1907, procured Charles J. Swanson and Christine Swanson, his wife, to execute and deliver to said company the deed from them referred to in said paragraph XIII of the amended bill; and these defendants respectively say that said company purchased the lands described in the said amended bill at the time and in the manner and for the consideration aforesaid, in good faith,

believing that Charles A. Smith and Charles J. Swanson were then well and lawfully seized of [105] said lands in fee simple and could rightfully and lawfully convey the same to said company, and said company had then no notice or knowledge whatsoever of any claim in or to any of said lands on the part of the complainant.

TWENTY-FIRST. These defendants respectively admit that the aforesaid two deeds from Charles A. Smith and Charles J. Swanson, the same being the deeds referred to in paragraph XIII of the amended bill, were filed for record in the office of the Recorder of Conveyances for Linn County, Oregon, on September 9th, 1908, but deny that they were so filed by Charles A. Smith.

TWENTY-SECOND. These defendants respectively say that it is not true that either of the deeds referred to in the next foregoing paragraph was without consideration, or that any of these defendants or said company had notice or knowledge of any of the alleged conspiracies, frauds or irregularities complained of in the amended bill, or that either of the two deeds last above referred to was for the use or benefit of Charles A. Smith, or that either of said two deeds was executed for the purpose of preventing complainant from recovering said lands, or any part of the same, or that said deed from Charles A. Smith was executed on any other date than the date on which it purports to have been executed.

TWENTY-THIRD. These defendants respectively say that they do not know and cannot state as of their or either of their belief or otherwise whether or not it is alleged or is the fact that the

complainant did not know of the existence of the deeds referred to in paragraph XIII of the amended bill, until the same were offered for record, or that complainant had no means of discovering the existence of said deeds until they were offered for record, or that complainant prior to the commencement of the suit caused any search or inquiry to be made to ascertain who had some right, title, or interest in or to any of the aforesaid lands, and therefore leave complainant to make such proof thereof as it may be able to produce.

TWENTY-FOURTH. These defendants respectively say that it is not true that all the capital stock of said Linn and Lane Timber Company [106] has been or is held for the use or benefit of defendant Charles A. Smith, or that said Smith has at all times been or is the president of said company, but, on the contrary, that the facts respecting said matters are as follows: On February 15th, 1908, said Smith sold and transferred fifteen shares of said stock to Charles J. Johnson, of the City of Minneapolis, who has since been and now is the owner of the same. On February 14th, 1908, said Smith transferred three hundred shares of said stock to the Swedish-American National Bank of Minneapolis to secure promissory notes and other obligations given by him to said Bank, amounting in the aggregate to upwards of \$350,000. On February 15th, 1908, said Smith transferred ten shares of said stock to Charles J. Swanson of Fridley, Minnesota, to secure a promissory note for \$5,000 made by said Smith, and said Swanson has since held and now holds said ten shares as such security. On October 31, 1908, said Smith trans-

ferred to said Swedish-American National Bank additional two hundred and ten shares of said stock, two hundred and eight of which direct to said Bank, and one each to B. F. Nelson and C. C. Wyman in trust for said Bank, to further secure his, the said Smith's, aforesaid promissory notes and other obligations to said Bank. On said October 31, 1908, said Charles J. Johnson transferred his aforesaid fifteen shares to said Swedish-American National Bank to secure promissory notes and other obligations given by him to said Bank, amounting to upwards of \$50,000. Said Swedish-American National Bank held the five hundred and ten shares transferred to it as hereinbefore stated until on or about the first day of December, 1908, at which time it sold, transferred and assigned to the Northwestern National Bank of Minneapolis the aforesaid promissory notes and other obligations held by it against said Smith and Johnson, and the said shares of stock held as security for the same, and the said Northwestern National Bank has since held, and now holds, said five hundred and twenty-five shares of the stock of said company as security for said promissory notes and other obligations of said Smith and Johnson, and there is now unpaid on said promissory notes and other obligations more than \$250,000.

TWENTY-FIFTH. These defendants respectively aver that if the [107] complainant ever had any cause of action or suit for or concerning any of the matters in said amended bill mentioned, which these defendants respectively do in no sort admit, the complainant had full cognizance of all matters and things constituting such cause of action prior to the first day of March, 1905, and complainant is

guilty of gross laches in not bringing suit upon such cause of action before the lands described in the amended bill were conveyed to defendant, the Linn and Lane Timber Company, and pray that because of such laches complainant be not awarded any relief in this suit, and that its said amended bill be dismissed.

TWENTY-SIXTH. These defendants respectively are informed and believe that William J. Lawrence left heirs who are now living and within the jurisdiction of this court, but the names and places of residence of such heirs are unknown to these defendants respectively; and these defendants respectively say that they are advised and believe that said heirs are necessary and indispensable parties to this suit, and pray that said amended bill be dismissed because said heirs have not been made parties to the same.

TWENTY-SEVENTH. Defendants Charles A. Smith and Charles J. Swanson, respectively, aver that this suit was not commenced against them, or either of them, until more than six years after the date of the issuance of the patents to O. Judd Mealey, Joseph O. Mikalson, John Thomas Parker, Samuel D. Pickens, Joseph H. Steingrandt, John A. Thompson, Charles Wiley and William W. Billings, described in the amended bill; and said Charles A. Smith and Charles J. Swanson, respectively, claim the benefit of an Act of Congress respecting the limitation of suits by the United States to vacate and set aside patents, approved March 3, 1891, and entitled "An Act to amend Section Eight of an Act approved March third, 1891, entitled An Act to repeal timber culture laws and for other purposes," in bar of the

complainant's said bill and all the relief sought by the complainant in this suit, as to the several patents referred to in this paragraph, and as to any and all of the lands for which said patents were issued; and said Charles A. Smith and Charles J. Swanson, respectively, pray that they, [108] respectively, may have the benefit of said Act as if they had severally and formally pleaded the same.

And these defendants respectively deny all and all manner of unlawful combinations and confederacy wherewith they are charged by said amended bill; without this, there is any other matter, cause or thing in said amended bill of complaint contained material to, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of these defendants, all which matters and things these defendants respectively are ready and willing to aver, maintain and prove as this Honorable Court shall direct; and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) C. A. SMITH.

C. J. SWANSON.

FRED. A. KRIBS.

(Signed) JOHN LIND,
A. UELAND,
W. M. JEROME,
JNO. M. GEARIN,

Of Counsel for said Charles A. Smith and Charles J. Swanson.

ALBERT H. TANNER,

Of Counsel for said Frederick A. Kribs.

Filed January 29, 1909. G. H. Marsh, Clerk
United States Circuit Court, District of Oregon.
[109]

And afterwards, to wit, on the 29th day of January, 1909, there was duly filed in said court an Answer of the Linn and Lane Timber Company to the Amended Bill of Complaint, in words and figures as follows, to wit: [110]

[Answer of Linn & Lane Timber Co. to Amended Bill.]

(Title of Court and Cause.)

The answer of Linn and Lane Timber Company, one of the defendants, to the amended bill of complaint of the United States of America, the complainant.

This defendant, now and at all times hereafter saving and reserving to itself all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said amended bill of complaint contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer to, answering says:

FIRST. This defendant avers that if the complainant ever had any cause of suit or action against this defendant for or in respect of the several allegations and complaints in complainant's said amended bill contained, or any of them, the same accrued to the complainant upwards of six years before the filing of the bill of complaint in this suit against this de-

fendant, or the suing out process thereon against [111] this defendant; and that the bill of complaint in this suit against this defendant was not filed, nor was the process thereon against this defendant issued within six years after the date of the issuance of the several patents, which complainant in its said amended bill prays to have annulled and set aside; and this defendant claims the benefit of an Act of Congress respecting the limitation of suits by the United States to vacate and annul patents, approved March 3, 1891, and entitled "An Act to amend section eight of an Act approved March third, 1891, entitled An Act to repeal timber culture laws and for other purposes," in bar of the complainant's said bill and all the relief sought by the complainant in this suit; and this defendant prays that it may have the same benefit from said Act as if it had formally pleaded the same.

SECOND. This defendant, insisting on its aforesaid defense, denies that Frederick A. Kribs, C. A. Smith, Charles J. Swanson, O. Judd Mealey, Will Mealey, John A. Thompson, or any of them, either together with other persons or otherwise, ever entered into a conspiracy or agreement to defraud the complainant out of the title to the lands described in the amended bill, or any of said lands. And this defendant says it is not true that it was ever understood or agreed between the persons named in this paragraph, or any of them, that O. Judd Mealey, Will Mealey and John A. Thompson, or any of them, should solicit or procure any person to make application for or entry on any of said land under any Act

of Congress or otherwise; or that said O. Judd Mealey, Will Mealey and John A. Thompson, or any of them, should procure or obtain from any person filing on any of said lands any agreement or promise that the title which such person might acquire from the complainant should inure to the benefit of Frederick A. Kribs, or C. A. Smith, or Charles J. Swanson; or that any person after filing on any of said lands and receiving certificate that he had been permitted to file thereon, should or would execute or deliver to Frederick A. Kribs, or C. A. Smith, or Charles J. Swanson, any deed or other conveyance of any of said lands; or that O. Judd Mealey, Will Mealey and John A. Thompson, or any of them, should promise any person to pay any expense of filing, [112] or of making final proof on any of said lands, or the price required to be paid to the complainant for any of said lands, or any part of such expense or purchase price.

THIRD. This defendant has no reason to doubt, and therefore believes, that applications to enter and purchase the several tracts of land described in the amended bill, under the Act of Congress in said bill referred to, were made by the several entrymen in said amended bill named, at the United States Land Office at Roseburg, Oregon, at or about the times in said amended bill stated, and that each application was verified by the oath of the person making such application, and filed on the date mentioned in the amended bill, and that each application was for the land in that behalf described in said amended bill, except that the land applied for by O. Judd Mealey

was in Range 2 East, and the land applied for by Joseph Steingrandt was in Section 10, Township 14 South, Range 3 East.

FOURTH. This defendant does not know and cannot set forth as to its belief or otherwise whether or not it is alleged or is the fact that O. Judd Mealey, Will Mealey and John A. Thompson, or any of them, solicited or procured any of said entrymen to make any of the aforesaid applications to purchase and enter said lands, and therefore leaves the complainant to make such proof thereof as it shall be able to produce.

FIFTH. This defendant says it is not true that any of said applicants, prior to making or filing his application to purchase or enter said land, made a contract or agreement with O. Judd Mealey, Will Mealey and John A. Thompson, or any of them, whereby such applicant promised or agreed to purchase or enter said lands, or any part of the same, for the use or benefit of Frederick A. Kribs, C. A. Smith, or Charles J. Swanson; or that O. Judd Mealey or John A. Thompson, prior to making or filing his said application agreed to transfer, convey or set over any of said land, to Frederick A. Kribs, C. A. Smith, or Charles J. Swanson, or entered into any agreement with Frederick A. Kribs, C. A. Smith or Charles J. Swanson to transfer, or convey, or set over, any of said lands to said Frederick A. Kribs, C. A. Smith or Charles J. Swanson. And this defendant says it is not true that prior to the [113] making or filing of said applications, Frederick A. Kribs promised to pay any expense of filing, or of making final

proof, or the purchase price on or for any of the lands entered by O. Judd Mealey or John A. Thompson.

SIXTH. This defendant does not know and cannot set forth as to its belief or otherwise whether or not it is alleged or is the fact that O. Judd Mealey, Will Mealey or John A. Thompson promised or agreed to pay any of said applicants the sum of \$50, or any other sum, or the expense of filing or of making final proof on any of said lands, or the purchase price for any of said lands, or any part of such expense or purchase price, and defendant therefore leaves the complainant to make such proof thereof as it shall be able to produce.

SEVENTH. This defendant has no reason to doubt, and therefore believes that the Timber and Stone Sworn Statements mentioned in the amended bill, contained and set forth, respectively, the several matters which in that behalf are in said amended bill specified, but for greater certainty this defendant craves leave to refer to said statements when produced.

EIGHTH. This defendant has no reason to doubt, and therefore believes, that upon filing the sforesaid statements, the Register of said United States Land Office posted a notice of each application as required by law, and furnished each applicant a copy of such notice for publication in a newspaper as required by law, and that satisfactory evidence that said notices had been so published in a newspaper was furnished to said Register, and that the applicants, respectively, furnished satisfactory evi-

dence to said Register that the land covered by his application or entry was unfit for cultivation and valuable chiefly for timber, and that it was unoccupied and without improvement, either mining or agricultural, and that it apparently contained no valuable deposits of gold, silver, cinnebar, copper or coal; and that upon submission of such proof the officers of said Land Office received from each applicant \$400 as payment for the land described in the application of such applicant at the rate of \$2.50 per acre, and permitted each applicant to enter the land described in his [114] application, and issued to each applicant a certificate of purchase, as stated in said amended bill, but for greater certainty as to said final proofs and certificates of purchase this defendant craves leave to refer to the same when produced.

NINTH. This defendant does not know and cannot set forth as to its belief or otherwise whether or not it is alleged or is the fact that O. Judd Mealey, Will Mealey or John A. Thompson caused any of the notices referred to in the foregoing paragraph (except the notices furnished to O. Judd Mealey and John A. Thompson) to be published in a newspaper, or furnished to the Register of said Land Office evidence that any of said notices (except the notices furnished to said Mealey and Thompson), had been published in a newspaper, or procured any of the applicants to furnish any evidence to said Register, and defendant therefore leaves the complainant to make such proof thereof as it shall be able to produce.

TENTH. This defendant is informed and believes that defendant Frederick A. Kribs resided in

the State of Oregon during the years 1900 to 1903, both inclusive, and that during this period, he was engaged in buying and selling timber lands situated in the States of Oregon and California, and that during said period defendant Charles A. Smith resided in the City of Minneapolis, in the State of Minnesota; that on or about the first day of January, 1900, it was agreed between said Kribs and Smith that said Kribs might from time to time submit to said Smith lists of timber lands in said Oregon and California, acquired or bargained for by him, the said Kribs, together with information concerning the timber on such lands, and the price paid or bargained to be paid for the same by said Kribs, and that said Smith might thereupon purchase the lands so submitted at the price paid or bargained to be paid for the same by said Kribs, with a reasonable amount per acre added to such price, which amount to be added was thereafter fixed and agreed upon by said Kribs and Smith to be the sum of twenty-seven and one-half cents per acre; that said agreement was modified on the 21st day of December, 1901, so that the price to be paid by said Smith thereafter under said agreement was to be fifty cents per acre in addition to [115] the price paid or bargained to be paid by said Kribs for such lands, and said agreement was again modified on the 5th day of December, 1902, so that the price to be paid by said Smith under said agreement during the following twelve months was to be thirty cents per acre in addition to the price paid or bargained to be paid by said Kribs for such lands; that said Smith being a large purchaser of timber lands in said States

during said period, it was considered that if it should be generally known in any locality that said Smith was purchasing timber lands in such locality such knowledge would tend to unduly advance prices, and with a view of acquiring timber lands at a reasonable price, it was further understood and agreed between said Kribs and Smith, that the latter might designate persons other than himself in whose names title might be taken to such lands as said Smith might purchase pursuant to said agreement.

ELEVENTH. This defendant is informed and believes that between the 17th day of April and the 13th day of October, 1900, said Frederick A. Kribs purchased from the entrymen named in the amended bill, respectively, at the price of \$4.75 per acre, the land for which said entrymen had theretofore respectively made and filed the timber and stone sworn statements described in the amended bill, and for said consideration then paid to said entrymen, they respectively conveyed to said Kribs, the wives of the married entrymen joining, the lands covered by their respective entries, and said conveyances were in each instance by deed in which the entrymen covenanted that he was seized in fee simple and that he would warrant and defend the premises conveyed against all lawful claims whatsoever. This defendant is informed and believes that thereafter the said Frederick A. Kribs offered the lands so conveyed to him to said C. A. Smith in accordance with the aforesaid agreement between them, and said Smith accepted said lands, and paid for the same \$4.75 per acre, and twenty-seven and one-half cents per acre additional,

in accordance with the said agreement, which was then the fair and full value of said lands, and having so accepted said lands and paid for the same, said Smith, in accordance with the said agreement, directed an undivided one-fourth interest in said lands to be conveyed to Charles J. Swanson, and the remaining [116] three-fourths interest to himself, and in accordance with such direction said Kribs and his wife executed and delivered to said Smith a deed, conveying to him an undivided three-fourths interest in said lands, and also executed and delivered to said Swanson a deed conveying to him an undivided one-fourth interest in said lands, and in each said deeds said Kribs covenanted that he was seized in fee simple of said lands, and had good right to sell and convey the same and that he would warrant and defend the same against all persons lawfully claiming or to claim the whole or any part thereof.

TWELFTH. This defendant is informed and believes that Frederick A. Kribs, Charles A. Smith and Charles J. Swanson, respectively, had no notice or knowledge of any of the alleged conspiracies, frauds, or irregularities complained of in the amended bill prior to the commencement of this suit, and that each in accepting and paying for each deed, executed and delivered to him as stated in the foregoing paragraph, acted in good faith, believing that the grantor in such deed could then rightfully and lawfully sell and convey the lands covered by such deed.

THIRTEENTH. This defendant does not know and cannot set forth as to its belief or otherwise whether or not it is alleged or is the fact that any

statement or representation in any of the applications or final proofs referred to in the amended bill was false, or fraudulent, or untrue, or made with intent to deceive or defraud the complainant out of the use of, or title to, or possession of, any of said lands, and this defendant therefore leaves complainant to make such proof thereof as it may be able to produce.

FOURTEENTH. This defendant denies that any of the applications or entries referred to in the amended bill of complaint was made by any of said applicants and entrymen as agent of, or for the use or benefit of C. A. Smith, Frederick A. Kribs or Charles J. Swanson.

FIFTEENTH. This defendant believes that on the 9th day of July, 1902, complainant issued a patent to each of the following named applicants, to wit: O. Judd Mealey, Joseph O. Mikalson, John Thomas Parker, Samuel D. Pickens, Joseph H. Steingrandt, John A. Thompson, Charles Wiley and William W. Billings, and that on the 12th [117] day of August, 1902, complainant issued a patent to each of the other said applicants, and that complainant thereby granted and conveyed to each applicant the land covered by his said application and entry.

SIXTEENTH. This defendant says it is not true that any of the deeds hereinbefore referred to was without consideration, or that Frederick A. Kribs, C. A. Smith, or Charles J. Swanson, paid or advanced to any of said entrymen any fee or expense, or any of the purchase money paid to the complainant, or any other sum, except that said Kribs paid said entrymen the consideration for their deeds to him as

hereinbefore stated. And this defendant says it is not true that any deed hereinbefore referred to was given to prevent complainant from recovering any of the lands described in the amended bill.

SEVENTEENTH. This defendant says that on or about the 31st day of May, 1906, it was duly organized as a corporation under the general laws of the State of Minnesota, and its certificate of incorporation was executed by Charles A. Smith, Johanna A. Smith, and John Lind, and was recorded in the office of the Secretary of State for said State of Minnesota on May 24, 1906, but said certificate was not executed by Vernon Smith. And this defendant says that it was not organized for any purpose except as stated in said certificate of incorporation in the following words, to wit: "To buy, hold and sell timber lands and tenements in the United States of America and to conduct forestry, mining and agricultural operations on the same; to carry on logging operations, and buy, sell, store and transport logs and other forest products for itself and others; to build and operate mills for the manufacture of lumber and other wood and forest products; to construct and operate dams, sluices, ditches, flumes, chutes, booms, tramways and other appliances for irrigation and for carrying on the mining, agricultural, logging and manufacturing operations of the corporation; to develop electric energy and other power for the operation of its works and the transportation of its products and for sale."

EIGHTEENTH. This defendant says it is not true that it was organized by C. A. Smith or any other

person with intent to defraud or deceive complainant, or to prevent complainant from recovering any [118] of the lands described in the amended bill.

NINETEENTH. This defendant says that on or about the 25th day of June, 1906, it caused to be filed in the office of the Secretary of State for the State of Oregon a certified copy of its said certificate of incorporation, and a power of attorney constituting and appointing Frederick A. Kribs as its attorney in fact and agent in and for the State of Oregon, but this defendant says it is not true that C. A. Smith or any other person caused such certified copy or such power of attorney to be filed in said office for the purpose of preventing complainant from recovering any of the lands described in said amended bill.

TWENTIETH. This defendant admits that since said certificate and power of attorney were so filed in the office of the Secretary of State for said State of Oregon, C. A. Smith and F. A. Kribs have pretended and claimed that said Kribs has been and is attorney in fact in and for said State of Oregon for this defendant.

TWENTY-FIRST. This defendant says that it was organized with a capital stock of one hundred thousand dollars, divided into one thousand shares of one hundred dollars each; that on the 4th day of June, 1906, defendant Charles A. Smith and Johanna A. Smith, his wife, executed and acknowledged three certain deeds in which this defendant was named as grantee, all dated on said day; that one of said deeds was for the lands described in the amended bill and certain other lands in Linn County, Oregon, and is

one of the deeds referred to in paragraph XIII of the amended bill; that one of said three deeds was for certain lands in Lane County, Oregon, then owned by said Smith, and one was for certain lands in Douglass County, Oregon, then also owned by said Smith; that at a meeting of the board of directors of this defendant, held at the City of Minneapolis in the State of Minnesota, on the 9th day of June, 1906, said Charles A. Smith offered to convey to this defendant the lands described in said three deeds and to accept as a consideration for such conveyance the said capital stock of this defendant, which offer was on said day, and at said meeting accepted by this defendant, and pursuant thereto said three deeds were on said date delivered by said [119] Charles A. Smith to this defendant and the said capital stock of this defendant was at the same time issued by this defendant in accordance with directions given by said Charles A. Smith, as follows: One share thereof to Johanna A. Smith, one share thereof to John Lind, and nine hundred and ninety-eight shares thereof to said Charles A. Smith; that in order to perfect the title to the lands which said Smith agreed to convey to this defendant for said stock, said Smith, on May 28, 1907, procured Charles J. Swanson and Christine Swanson, his wife, to execute and deliver to this defendant the deed from them referred to in said paragraph XIII of the amended bill; and this defendant says that it purchased the lands described in said amended bill at the time and in the manner and for the consideration aforesaid, in good faith, believing that Charles A. Smith and Charles J. Swanson were then

well and lawfully seized of said lands in fee simple and could rightfully and lawfully convey the same to this defendant, and this defendant had then no notice or knowledge whatsoever of any claim in or to any of said lands on the part of the complainant.

TWENTY-SECOND. This defendant admits that the aforesaid two deeds from Charles A. Smith and Charles J. Swanson, the same being the deeds referred to in paragraph XIII of the amended bill, were filed for record in the office of the Recorder of Conveyances for Linn County, Oregon, on September 9th, 1908, but denies that they were so filed by Charles A. Smith.

TWENTY-THIRD. This defendant says it is not true that either of the deeds referred to in the next foregoing paragraph was without consideration, or that this defendant had notice or knowledge of any of the alleged conspiracies, frauds or irregularities complained of in the amended bill, or that either of the two deeds last above referred to was for the use or benefit of Charles A. Smith, or that either of said two deeds was executed for the purpose of preventing complainant from recovering said lands, or any part of the same, or that said deed from Charles A. Smith was executed on any other date than the date on which is purports to have been executed.

TWENTY-FOURTH. This defendant says that it does not know and [120] cannot state as to its belief or otherwise whether or not it is alleged or is the fact that the complainant did not know of the existence of the deeds referred to in paragraph XIII of the amended bill, until the same were offered for

record, or that complainant had no means of discovering the existence of said deeds until they were offered for record, or that complainant prior to the commencement of the suit caused any search or inquiry to be made to ascertain who had some right, title, or interest in or to any of the aforesaid lands, and therefore leaves complainant to make such proof thereof as it may be able to produce.

TWENTY-FIFTH. This defendant says that it is not true that all the capital stock of this defendant has been or is held for the use or benefit of defendant Charles A. Smith, or that said Smith has at all times been or is the president of this defendant, but on the contrary that the facts respecting said matters are as follows: On February 15th, 1908, said Smith sold and transferred fifteen shares of said stock to Charles J. Johnson, of the city of Minneapolis, who has since been and now is the owner of the same. On February 14th, 1908, said Smith transferred three hundred shares of said stock to the Swedish-American National Bank of Minneapolis to secure promissory notes and other obligations given by him to said bank, amounting in the aggregate to upwards of \$350,000. On February 15th, 1908, said Smith transferred ten shares of said stock to Charles J. Swanson of Fridley, Minnesota, to secure a promissory note for \$5,000 made by said Smith, and said Swanson has since held and now holds said ten shares as such security. On October 31, 1908, said Smith transferred to said Swedish-American National Bank additional two hundred and ten shares of said stock, two hundred and eight of which direct to said Bank,

and one each to B. F. Nelson and C. C. Wyman in trust for said Bank, to further secure his, the said Smith's, aforesaid promissory notes and other obligations to said Bank. On said October 31, 1908, said Charles J. Johnson transferred his aforesaid fifteen shares to said Swedish-American National Bank to secure promissory notes and other obligations given by him to said Bank, amounting to upwards of \$50,000. Said Swedish-American National Bank held the five hundred and ten shares [121] transferred to it as hereinbefore stated until on or about the first day of December, 1908, at which time it sold, assigned, and transferred to the Northwestern National Bank of Minneapolis the aforesaid promissory notes and other obligations held by it against said Smith and Johnson, and the said shares of stock held as security for the same, and the said Northwestern National Bank has since held, and now holds, said five hundred and twenty-five shares of the stock of this defendant as security for said promissory notes and other obligations of said Smith and Johnson, and there is now unpaid on said promissory notes and other obligations more that \$250,000.

TWENTY-SIXTH. This defendant avers that the complainant ever had any cause of action or suit for or concerning any of the matters in said amended bill mentioned, which this defendant does in no sort admit, the complainant had full cognizance of all matters and things constituting such cause of action prior to the first day of March, 1905, and complainant is guilty of gross laches in not bringing suit upon such cause of action before the lands described in the

amended bill were conveyed to this defendant and prays that because of such laches complainant be not awarded any relief in this suit, and that its said amended bill be dismissed.

TWENTY-SEVENTH. This defendant is informed and believes that William J. Lawrence left heirs who are now living and within the jurisdiction of this court, but the names and places of residence of such heirs are unknown to this defendant: and this defendant says that it is advised and believes that said heirs are necessary and indispensable parties to this suit, and prays that said amended bill be dismissed because said heirs have not been made parties to the same.

And this defendant denies all and all manner of unlawful combinations and confederacy wherewith it is charged by said amended bill: without this, there is any other matter, cause or thing in said amended bill of complaint contained material to, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant. [122] all which matters and things this defendant is ready and willing to aver maintain and prove as this Honorable Court shall direct; and humbly prays to be hence dismissed with its reasonable costs and

charges in this behalf most wrongfully sustained.

LINN & LANE TIMBER COMPANY.

[Seal]

By B. F. NELSON,
President.

C. C. WYMAN,
Secretary.

JOHN LIND,
A. UELAND,
W. M. JEROME,
JNO. M. GEARIN,

Of Counsel for said Defendant.

Filed January 29, 1909. G. H. Marsh, Clerk
United States Circuit Court, District of Oregon.
[123]

And afterwards, to wit, on the 30th day of July, 1909,
there was duly filed in said court, a Replication
to the Answer of C. A. Smith et al. to the
Amended Bill of Complaint, in words and
figures as follows, to wit: [124]

**[Replication to Joint and Several Answers of C. A.
Smith et al. to Amended Bill.]**

(Title of Court and Cause.)

The replication of J. R. Wyatt, Assistant United
States District Attorney for the District of Oregon,
to the joint and several answers of defendants, C. A.
Smith, Charles J. Swanson and Frederick A. Kribs
and other defendants, to the amended bill in equity
exhibited against it and others by the United States
District Attorney for Oregon in behalf of said United
States in the Circuit Court of the said United States,
this repliant for the said United States, saving and

reserving all advantage of exceptions to the said answer, for replication thereto says: That he for the said United States will aver and prove his said bill in equity to be true, certain and safe in law to be answered [125] unto, and that the said answer is uncertain, untrue and unsafe to be replied unto by this repliant; without this, that any other matter or thing whatsoever in said answer contained material or effectual in law to be replied unto confessed and avoided, traversed or denied, is true. All which matters and things this repliant for the said United States is and will be ready to aver and prove as this Honorable Court shall direct and for the said United States he prays as in and by his said bill of complaint in equity he has already prayed.

(Signed) J. R. WYATT,
Attorney for Complainant.

United States of America,
District of Oregon,—ss.

I hereby accept service of the foregoing reply upon me by certified copy at Portland, Oregon, on this 29 day of July, 1909.

C. A. DOLPH,
One of Counsel for Defendants.

Replication to Answer of C. A. Smith et al. Filed July 30, 1909. G. H. Marsh, Clerk U. S. Circuit Court, District of Oregon. [126]

And afterwards, to wit, on the 30th day of July, 1909, there was duly filed in said court a Replication to the Answer of the Linn & Lane Timber Company to the Amended Bill of Complaint, in words and figures as follows, to wit: [127]

[**Replication to Answer of Linn & Lane Timber Co.
et al. to Amended Bill.**]

(Title of Court and Cause.)

The replication of J. R. Wyatt, Assistant United States District Attorney for the District of Oregon, to the answer of the defendant, the Linn & Lane Timber Company, a corporation, to the amended bill in equity exhibited against it and others by the United States District Attorney for Oregon, in behalf of said United States in the Circuit Court of the said United States, this repliant for the said United States, saving and reserving all advantage of exceptions to the said answer, for replication thereto says: that he for the said United States will aver and prove his said bill in equity to be true, certain and safe in law [128] to be answered unto, and that the said answer is uncertain untrue and unsafe to be replied unto by this repliant; without this, that any other matter or thing whatsoever in said answer contained, material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things this repliant for the said United States is and will be ready to aver and prove as this Honorable Court shall direct and for the said United States he prays as in and by his said bill of complaint in equity he has already prayed.

(Signed) J. R. WYATT,
Attorney for Complainant.

United States of America,
District of Oregon,—ss.

I hereby accept service of the foregoing Reply upon me by certified copy, at Portland, Oregon, this

29 day of July, 1909.

C. A. DOLPH,

One of Counsel for Defendants.

Replication to Answer of Linn and Lane Timber Co. Filed July 30, 1909. G. H. Marsh, Clerk United States Circuit Court, District of Oregon.
[129]

And afterwards, to wit, on Friday, the 18th day of February, 1910, the same being the 117th judicial day of the regular October, 1909, term of said court—Present, the Honorable ROBERT S. BEAN, United States District Judge presiding—the following proceedings were had in said cause, to wit: [130]

[Order Setting Cause for Final Hearing.]

(Title of Court and Cause.)

Now, at this day, on motion of Mr. John McCourt, United States Attorney, IT IS ORDERED that this cause be, and the same is hereby, set for final hearing on Monday, April 18, 1910. [131]

And afterwards, to wit, on the 18th day of April, 1910, there was duly filed in said court objections to proposed amendment to *to* Bill of Complaint, in words and figures as follows, to wit: [132]

[Objections of Charles A. Smith et al. to Proposed Amendment to Amended Bill.]

(Title of Court and Cause.)

Defendants Charles A. Smith, Charles J. Swanson,

and the Linn and Lane Timber Company, jointly and severally, object to the proposed amendment to the amended bill of complaint on the following grounds:

1. It does not appear that the notice of the motion for leave to amend, which is prescribed by Equity Rule 29 in case of amendment of a bill after replication has been given to the other defendants in the suit who would be affected if the amendment was made.

2. It does not appear that the proposed amendment is not made for the purpose of veration or delay or that the matter of the proposed amendment is material, and could not with reasonable diligence have been sooner introduced into the Bill as required by Equity Rule 29.

3. The proposed amendment would not remedy the want of equity appearing on the face of the Bill.

4. The proposed amendment would enlarge complainant's case and change the character and quality of the relief.

5. The subject matter of the proposed amendment, if material, is in the nature of a cause of action at law, not within jurisdiction of equity.

6. The proposed amendment would render the Bill *maltifarious*. [133]

7. The proposed amendment contains the following impertinent matter: "Said lands are now of the reasonable value of Two Hundred Forty-four Thousand (\$244,000.00) Dollars."

8. The entire proposed amendment is impertinent matter, because the value of the land at the time of

the issuance of the final receiver's receipts less the amount then received by the complainant, would be the measure of damages not the value of the land at any subsequent date.

9. The proposed amendment would require new answers.

Dated April 18th, 1910.

JOHN LIND,
A. UELAND,
W. M. JEROME,
J. M. GEARIN,

Counsel for said Defendants.

Objections to Proposed Amendment to Bill of Complaint. Filed April 18, 1910. G. H. Marsh, Clerk, U. S. Circuit Court, District of Oregon. [134]

And afterwards, to wit, on the 18th day of April, 1910, there was duly filed in said court an affidavit in support of motion to amend Bill of Complaint, in words and figures as follows, to wit:
[135]

[Affidavit Filed April 18, 1910, of John McCourt.]

(Title of Court and Cause.)

United States of America,
District of Oregon,—ss.

I, John McCourt, being first duly sworn, say that I am United States Attorney for the District of Oregon and that the proposed amendment to the bill of complaint herein offered by me as United States Attorney, on or about the 18th day of February, 1910, is not and was not made for the purpose of vexation

or delay and the same is material and relevant in this cause, and could not have been by affiant or by complainant, by reasonable diligence, sooner introduced into the bill; that complainant has had due notice of said proposed amendment, and by the allowance thereof will not be prejudiced in any way; that said amendment is offered in furtherance of justice and to prevent a multiplicity of suit.

JOHN McCOURT,
United States Attorney.

Subscribed and sworn to before me this 18th day of April, 1910.

J. R. WYATT,
Notaru Public for Oregon.

Affidavit. Filed April 18, 1910. G. H. Marsh,
Clerk, U. S. Circuit Court, District of Oregon.

[136]

And afterwards, to wit, on Monday, the 18th day of April, 1910, the same being the 7th judicial day of the regular April, 1910, term of said court—Present, the Honorable ROBERT S. BEAN, United States District Judge presiding,—the following proceedings were had in said cause, to wit: [137]

[Order of Submission of Motion for Leave to Amend Bill.]

(Title of Court and Cause.)

Now, at this day, come the plaintiff by Mr. John McCourt, United States Attorney, and defendants C. A. Smith, Charles J. Swanson and Linn & Lane

Timber Company, by Mr. John Lind, Mr. A. Ueland, and Mr. John N. Gearin, of counsel; defendant Frederick A. Kribs, by Mr. A. H. Tanner, of counsel, defendants O. Judd Mealey, Will Mealey, J. A. Thompson, Richard F. Malone, John J. Gilliland, Louis Maynard, Joseph O. Mickalson, James W. Rozell, John Thomas Parker, Sydney H. Scanland, Richard D. Watkinds, and Charles Wiley, by Mr. Percy R. Kelly of counsel; and defendants Samuel D. Pickens, Joseph H. Steingrandt and Alexander Gould by Mr. Louis H. Tarpley of counsel. Whereupon, said plaintiff moves the Court for leave to amend its bill of complaint herein. And the Court having heard the arguments of Mr. John McCourt, United States Attorney, and of Mr. A. Ueland, and Mr. John Lind, of counsel for defendants, will advise thereof. [138]

And afterwards, to wit, on Tuesday, the 19th day of April, 1910, the same being the 8th judicial day of the regular April, 1910, term of said court—Present, the Honorable ROBERT S. BEAN, United States District Judge presiding—the following proceedings were had in said cause, to wit: [139]

[Order Allowing Pro Forma Motion to Amend Bill.]

(Title of Court and Cause.)

This cause was heard upon the motion of the plaintiff to amend its bill of complaint herein, and was argued by Mr. John McCourt, United States Attorney, and by Mr. A. Ueland and Mr. John Lind, of

counsel for defendants; upon consideration whereof, IT IS NOW HERE ORDERED AND ADJUDGED that said motion be, and the same is hereby, allowed *pro forma*, reserving said motion for further consideration at the termination of the evidence upon the final hearing of this cause as the Court shall determine. [140]

And afterwards, to wit, on the 22d day of April, 1910, there was duly filed in said court, an Amendment to the Bill of Complaint, in words and figures as follows, to wit: [141]

[Amendment of Bill (Filed April 22, 1910).]

(Title of Court and Cause.)

Comes now the United States of America by John McCourt, United States Attorney for the District of Oregon, and by leave of the Court first had and obtained, amends its *will* of complaint herein by adding a paragraph thereto designated as Paragraph No. 10¹/₂, and therein alleges as follows:

10¹/₂.

That at the time of the issuance of said patents to and for said lands as aforesaid, the same were of the reasonable value of One Hundred Thirty-six Thousand (\$136,000.00) Dollars, and said lands are now of the reasonable value of Two Hundred Forty-four Thousand (\$244,000.00) Dollars, and by reason of the fraudulent practices and representations of the defendants, by which complainant was wrongfully induced to issue patents for said lands as hereinbefore alleged, complainant was and is damaged in a

sum of money equal to the full value of said lands, and complainant will be entitled to recover said sum herein in the event it shall for any reason be impossible or inequitable for the Court to decree a cancellation of said patents as hereinafter prayed.

Dated at Portland, Oregon, this 21st day of April, 1910.

(Signed) JOHN McCOURT,
United States Attorney.

Filed April 22, 1910. G. H. Marsh, Clerk. [142]

And afterwards, to wit, on the 22d day of April, 1910, there was duly filed in said court an Answer to Amendment to Bill of Complaint, in words and figures as follows, to wit: [143]

[Joint and Several Answers of Linn & Lane Timber Co. et al. to Amendment of Bill.]

(Title of Court and Cause.)

The joint and several answers of Linn and Lane Timber Company, Charles A. Smith, Charles J. Swanson, and Frederick A. Kribs, defendants, to the matter contained in the amendment to the bill of complaint filed April 21, 1910:

These defendants, respectively, now and at all times hereafter saving to themselves all and all manner of benefit of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in the said amendment contained, and hereby expressly saving and reserving an exception to the order permitting said amendment to be made, severally answering the averments in said

amendment contained say as follows:

1. These defendants, respectively, deny that the value of the land described in the amended bill of complaint, at the time of the issuance of the patents therein described, or at any time prior thereto, was the sum of one hundred thirty-six thousand dollars, or any other or greater sum than thirteen [144] thousand six hundred sixty-eight dollars; and these defendants, respectively, deny that said lands are now of the reasonable value of two hundred forty-four thousand dollars, or of any other or greater value than twenty-seven thousand two hundred dollars, and these defendants respectively deny that the complaint is, or has ever been, damaged in any sum or amount whatsoever by reason of the issuance of said patents, or any of them, or by reason of any matter or things whatsoever in said bill contained; and these defendants respectively deny that the complainant is, or will be, entitled to recover any sum or amount whatsoever against either or any of these defendants.

2. These defendants, respectively, by leave of Court first obtained, further answering the bill of complaint, say that soon after said entries were made, information was lodged in complainant's Department of the Interior, charging that all said entries were fraudulent and void; that an order was thereupon made by said Department directing patents not to issue on said entries; that said Department thereupon instituted and for a period of more than two years carried on an examination of all matters pertaining to the alleged frauds in said entries; that

much evidence was adduced in said examination, and in and by said examination and evidence the matters and things in the amended bill complained of were brought before the Secretary of said Department for his decision; that being fully informed in the premises said Secretary thereupon in and by Department Letter L. R. R. Div. 932-1902, dated May 17th, 1902, and directed to the Commissioner of the General Land Office decided and determined that all said entries were lawfully made and valid and that patents should be issued on the same; that said patents were [145] thereupon issued, and the same are the patents described in the bill of complaint. And these defendants respectively say that all said matters having been so examined, heard and decided by complainant's said Secretary of the Interior, complainant is and ought to be barred from maintaining its said bill of complaint in this court and that said bill should be dismissed.

LINN & LANE TIMBER COMPANY,
CHARLES A. SMITH,
CHARLES J. SWENSON,
By A. UELAND,

Their Attorney.

JOHN LIND,
A. UELAND,
W. M. JEROME,
JNO. M. GEARIN,

Of Counsel for said Defendants.

FREDERICK A. KRIBS,
By ALBERT H. TANNER,

Attorney and Counsel for said Frederick A. Kribs.

Filed April 22, 1910. G. H. Marsh, Clerk U. S. Circuit Court, District of Oregon. [146]

And afterwards, to wit, on Tuesday, the 3d day of May, 1910, the same being the 20th judicial day of the regular April, 1910, term of said court—Present, the Honorable ROBERT S. BEAN, United States District Judge presiding—the following proceedings were had in said cause, to wit: [147]

[Order Appointing Special Examiner, etc.]

(Title of Court and Cause.)

Now, on this day comes the complainant by Mr. John McCourt, the United States Attorney for the District of Oregon, and defendants, The Linn and Lane Timber Company, Charles A. Smith and Charles J. Swanson, by Mr. John Lind, Mr. A. Ueland and Mr. John M. Gerin, their counsel, and defendant, Frederick A. Kribs, by Mr. A. H. Tanner, his counsel, and thereupon said defendants moved the Court for an order appointing some qualified person at the City of Minneapolis, in the State of Minnesota, to act as Examiner of this Court to take orally such testimony and evidence as the parties hereto decide to be taken at said City of Minneapolis.

It is therefore ORDERED that Mr. George F. Hitchcock, Jr., of Minneapolis, Minnesota, be, and he is hereby, appointed as Special Examiner of this Court with power and authority to take [148] and transmit to this Court such depositions and testimony in this cause as the parties hereto decide to be taken at said city of Minneapolis, and at such time between

the first and tenth days of June, 1910, as may suit the convenience of said Examiner and of the parties hereto; and that said Examiner extend said testimony when so taken and report the same to this Court with all convenient speed, said testimony when so taken to be used upon the trial of this cause.

Dated May 3, 1910.

R. S. BEAN,
Judge.

Filed May 3, 1911. G. H. Marsh, Clerk. [149]

And afterwards, to wit, on Thursday, the 5th day of May, 1910, the same being the 22d judicial day of the regular April, 1910, term of said court—
Present, the Honorable ROBERT S. BEAN, United States District Judge presiding—the following proceedings were had in said cause, to wit: [150]

[Order Re Taking of Evidence, etc.]

(Title of Court and Cause.)

The complainant, by Mr. John McCourt, the United States Attorney for the District of Oregon, and defendants, the Linn and Lane Timber Company, Charles A. Smith, and Charles J. Swanson, by Mr. John Lind, Mr. A. Ueland, and Mr. John M. Gerin, their counsel, appearing in open court and consenting thereto, it is ordered:

1. That the time of the complainant for the taking of its evidence in chief in this cause, be, and the same hereby is, closed, the same having been taken orally before the court except that the complainant, if it be so advised, may take as its evidence in chief

the testimony of Charles L. Trabert between the first and tenth days of June, 1910, at Minneapolis, Minnesota, before George F. Hitchcock, Jr., Special Examiner, appointed such by order of this court, entered in this cause May 3, 1910.

2. That the time of the defendants for taking their evidence in this cause be, and the same is, hereby limited to and including the tenth day of June, 1910, unless such time be extended by stipulation in writing between counsel in the case.

3. That complainant have until June 25, 1910, to take such evidence in rebuttal in this cause as it may be advised. [151]

4. That the Clerk of this Court be, and is hereby, directed to transmit to George F. Hitchcock, Jr., at his office in the Federal Building in the City of Minneapolis, State of Minnesota, before May 20, 1910, the documents introduced as evidence in this cause marked United States Exhibits Numbers respectively 155 to 161, both inclusive, for the purpose of having the same used in the taking of the evidence for the defendants in this cause before said George F. Hitchcock, Jr., as Special Examiner heretofore appointed for that purpose.

Dated May 5th, 1910.

R. S. BEAN,
Judge.

Filed May 5, 1911. G. H. Marsh, Clerk. [152]

And afterwards to wit, on Wednesday, the 27th day of July, 1910, the same being the 91st judicial day of the regular April, 1910, term of said

court—Present, the Honorable ROBERT S. BEAN, United States District Judge presiding—the following proceedings were had in said cause, to wit: [153]

[Order Allowing Filing of Amendment to Amended Bill, etc.]

(Title of Court and Cause.)

Now, at this day, come the plaintiff by Mr. John McCourt, United States Attorney, and defendants C. A. Smith, Charles J. Swenson and Linn & Lane Timber Company, by Mr. John Lind and Mr. John M. Gearin, of counsel, and defendant Frederick A. Kribs by Mr. Albert H. Tanner of counsel. Whereupon, the final hearing of this cause is resumed. And the Court having heard the arguments of counsel, will advise thereof. Whereupon, IT IS ORDERED that said plaintiff be, and it is hereby, allowed ten days from this date within which to file a brief herein, and IT IS ORDERED that the plaintiff be, and is hereby, allowed to file an amendment to its amended bill of complaint. [154]

And afterwards, to wit, on the 6th day of August, 1910, there was duly filed in said court an Amendment to Bill of Complaint, in words and figures as follows, to wit: [155]

[Amendment (Filed August 6, 1910) to Bill of Complaint.]

(Title of Court and Cause.)

Now comes John McCourt, United States Attorney for the District of Oregon, and by leave of Court

first had and obtained in the above-entitled cause, hereby amends the bill of complaint herein by adding thereto paragraph 9 $\frac{1}{2}$, as follows:

9 $\frac{1}{2}$.

And your orator further shows unto your Honors and alleges, that by reason of the facts hereinbefore stated, a fraud has been perpetrated on the complainant and it has been deprived of the legal title to the land hereinbefore described, contrary to law and good conscience, and that the officers of the United States Land Office at Roseburg, Oregon, and of the Department of the Interior and the General Land Office of the United States, and the President of the United States, had no knowledge of the facts as hereinbefore set out, and did not discover such facts until a long time after the issuance of such patents, and by the exercise of reasonable diligence could not have [156] discovered these facts any sooner; that after certificates upon final proof were issued by the United States Land Office at Roseburg, Oregon, as hereinbefore set forth, and during the years 1900, 1901 and 1902, and prior to the issuance of patents as hereinbefore set forth for the lands hereinbefore described, the defendants Frederick A. Kribs, C. A. Smith, O. Judd Mealey, Will Mealey, George F. Mealey, J. A. Thompson, and other persons acting for them and in their behalf, secured the respective entrymen and entrywomen hereinbefore named each to execute and subscribe affidavits and depositions in which it was falsely set forth and represented, in effect, to complainant, that each of said entrymen and entrywomen respectively had entered the land in good faith, to appropriate it to his or her own ex-

clusive use and benefit, and that he or she had not, prior to making said entry, directly or indirectly made any agreement in any way or manner, with any person or persons whomsoever, by which the title which he or she might acquire from the Government of the United States should inure to the benefit of any person except himself or herself, and that he or she did not apply to purchase the land included in the respective entries on speculation; and thereby, and by means of said false and fraudulent final proofs as hereinbefore set forth made by said entrymen and entrywomen respectively, and by means of affidavits of like tenor and effect subscribed by the defendants Frederick A. Kribs, O. Judd Mealey, Will Mealey, George F. Mealey, J. A. Thompson, and other persons secured by them to make like affidavits, all of which were filed in the General Land Office of the United States prior to the issuance of said patents, issuance of said patents was procured and said [157] false and fraudulent representations were concealed from the complainant and complainant did not ascertain that a gross fraud had been perpetrated upon it, or that said representations of said entrymen and entrywomen, and of and in behalf of said defendants who were not entrymen, were false and fraudulent and untrue, until January, 1905, at which time complainant was conducting a vigorous investigation of charges of violations of the Public Land Laws, in Portland, Oregon, when a large number of said entrymen and entrywomen, together with the defendants Frederick A. Kribs, O. Judd Mealey, Will Mealey, George F. Mealey and J. A. Thompson, and also other persons who had acted with them in

the transactions hereinbefore set forth, disclosed to complainant that the Timber and Stone Land entries hereinbefore set forth and described were false and fraudulent as hereinbefore set forth; that prior to said January, 1905, complainant had no means or opportunity of ascertaining the false and fraudulent representations that had been made to it relative to said Timber and Stone land entries hereinbefore set forth, and of the fraud that had been perpetrated upon it relative thereto, by reason of the concealment of said fraud by the defendants as aforesaid.

The foregoing amendment is submitted in the above form by consent of opposing counsel, who do not require that a new formal amended bill of complaint be filed.

JOHN McCOURT.

United States Attorney for Oregon.

Amendment to Bill of Complaint. Filed August 6, 1910. G. H. Marsh, Clerk U. S. Circuit Court, District of Oregon. [158]

And afterwards, to wit, on Thursday, the 20th day of October, 1910, the same being the 16th judicial day of the regular October, 1910, term of said court—Present, the Honorable ROBERT S. BEAN, United States District Judge presiding—the following proceedings were had in said cause, to wit: [159]

(Title of Court and Cause.)

Decree.

Now, on this 20th day of October, this cause coming on for final decree therein and it appearing to the

Court that said cause was heretofore heard and tried before the Court on the pleadings of the respective parties therein and that upon said hearing and trial the complainant and the defendants introduced testimony and evidence in support of their respective contentions, and thereafter, said cause was argued and submitted to the Court and the same was taken under advisement, and the Court being now fully advised,
[160]

IT IS ORDERED, ADJUDGED AND DECREED that those certain patents issued by complainant and bearing date the 12th day of August, 1902, and purporting to convey the lands hereinafter described to the persons hereinafter mentioned, are hereby declared to be void, and the same are hereby cancelled, annulled and set aside, that is to say, the patents issued to the following persons purporting to convey to them the lands described respectively as follows, to wit:

ALEXANDER GOULD—East half of Northwest Quarter (E. $\frac{1}{2}$ NW. $\frac{1}{4}$); Southwest Quarter of Northwest Quarter (SW. $\frac{1}{4}$ NW. $\frac{1}{4}$); Southwest Quarter of Northeast Quarter (SW. $\frac{1}{4}$ NE. $\frac{1}{4}$), Section twenty-four (24), Township Fourteen (14) South, Range Four (4) East of Willamette Meridian.

SYDNEY H. SCANLAND—West half of Northeast Quarter (W. $\frac{1}{2}$ NE. $\frac{1}{4}$); Northeast Quarter of Northeast Quarter (NE. $\frac{1}{4}$ NE. $\frac{1}{4}$), of Section Twenty-eight (28); Northwest Quarter of Northwest Quarter (NW. $\frac{1}{4}$ NW. $\frac{1}{4}$) of Section Twenty-seven (27), Township Fourteen (14) South, Range Four (4) East of the Willamette Meridian.

RICHARD F. MALONE—Northwest Quarter (NW. $\frac{1}{4}$) of Section Twenty-two (22), Township Fourteen (14) South, Range Four (4) East of the Willamette Meridian.

JOHN J. GILLILAND — Northwest Quarter (NW. $\frac{1}{4}$) of Section Twenty-eight (28), Township Fourteen (14) South, Range Four (4) East of the Willamette Meridian.

LOUIS MAYNARD—West half of Southwest Quarter (W. $\frac{1}{2}$ SW. $\frac{1}{4}$); Northeast Quarter of Southwest Quarter (NE. $\frac{1}{4}$ SW. $\frac{1}{4}$); Northwest Quarter of Southeast Quarter (NW. $\frac{1}{4}$ SE. $\frac{1}{4}$), of Section Twenty-two (22), Township Fourteen (14) South, Range Four (4) East of the Willamette Meridian.

WILLIAM J. LAWRENCE—East half of Southwest Quarter (E. $\frac{1}{2}$ SW. $\frac{1}{4}$); South half of Southeast Quarter (S. $\frac{1}{2}$ SE. $\frac{1}{4}$), of Section Twenty (20), Township Fourteen (14) South, Range Four (4) East of the Willamette Meridian.

RICHARD C. WATKINDS — West half of Northeast Quarter (W. $\frac{1}{2}$ NE. $\frac{1}{4}$); Southeast Quarter of Northeast Quarter (SE. $\frac{1}{4}$ NE. $\frac{1}{4}$); Northeast Quarter of Southeast Quarter (NE. $\frac{1}{4}$ SE. $\frac{1}{4}$), Section Twenty-two (22), Township Fourteen (14) South, Range Four (4) East of the Willamette Meridian. [161]

JAMES W. ROZELL—North Half of Southeast Quarter (N. $\frac{1}{2}$ SE. $\frac{1}{4}$); North Half of Southwest Quarter (N. $\frac{1}{2}$ SW. $\frac{1}{4}$), Section Twenty-eight (28), Township Fourteen (14) South, Range Four (4) East of the Willamette Meridian.

CORNELIUS N. TUTHILL—South Half of

Southeast Quarter (S. 1½ SE. ¼), and Lots Three (3) and Four (4), Section Eighteen (18), Township Fourteen (14) South, Range Four (4) East of the Willamette Meridian.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all deeds and conveyances of said lands above described or any of them, made and executed by the defendants or any of them, and particularly mentioned and described in the bill of complaint herein, be and they are each and all hereby declared to be in fraud and violation of and subject to the rights of complainant and are hereby cancelled, annulled and set aside, and said defendants and each and all of them and their agents, servants and employees, are hereby enjoined and restrained from asserting, exercising or exerting any authority or control over said lands or any of them or over or in relation to the title to said lands or any part thereof by virtue of said deeds and conveyances or any of them or otherwise; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the lands hereinbefore described, be and the same are hereby declared to be the property of complainant in fee simple, divested of all right, title or estate in law or equity claimed or asserted by defendants or either or any of them, and particularly the defendants C. A. Smith and the Linn and Lane Timber Company, and the said complainant is entitled to the immediate possession of all of said lands; and [162]

IT IS FURTHER ORDERED that the application of complainant made prior to the hearing and

trial of this cause to amend the bill of complaint herein by adding thereto Paragraph 10 $\frac{1}{2}$ as follows:

“That at the time of the issuance of said patents to and for said lands as aforesaid, the same were of the reasonable value of One Hundred Thirty-six Thousand (\$136,000.00) Dollars and said lands are now of the reasonable value of Two Hundred Forty-four Thousand (\$244,000.00) Dollars, and by reason of the fraudulent practices and representations of the defendants, by which complainant was wrongfully induced to issue patents for said lands as hereinbefore alleged, complainant was and is damaged in a sum of money equal to the full value of said lands and complainant will be entitled to recover said sum herein in the event it shall for any reason be impossible or inequitable for the Court to decree a cancellation of said patents as hereinafter prayed,”

be and the same is hereby denied; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the relief prayed for by complainant as to the lands described in the complaint and to which patents were issued by complainant bearing date July 9th, 1902, be and the same is hereby denied and said bill of complaint is hereby dismissed as to said lands, that is to say, as to the lands described in the patents to the following named persons, defendants herein, and purporting to convey to them the lands described respectively as follows, to wit:

O. JUDD MEALEY—Southwest Quarter of Sec-

tion Twenty-six (26), Township Fourteen (14) South, Range Two (2) East of the Willamette Meridian.

JOHN A. THOMPSON—Northeast Quarter (NE. $\frac{1}{4}$) of Section Twenty-six (26), Township Fourteen (14) South, Range Two (2) East of the Willamette Meridian.

WILLIAM W. BILLINGS—Northwest Quarter Northwest Quarter (NW. $\frac{1}{4}$ NW. $\frac{1}{4}$) of Section Seventeen (17); North Half of Northeast Quarter (N. $\frac{1}{2}$ NE. $\frac{1}{4}$); Southwest Quarter Northeast Quarter (SW. $\frac{1}{4}$ NE. $\frac{1}{4}$) of Section Eighteen (18), Township Fourteen (14) South, Range Three (3) East of the Willamette Meridian. [163]

CHARLES WILEY—West Half of West Half (W. $\frac{1}{2}$ W. $\frac{1}{2}$) of Section Twelve (12), Township Fourteen (14) South, Range Three (3) East of the Willamette Meridian.

SAMUEL D. PICKENS—West Half of Southwest Quarter (W. $\frac{1}{2}$ SW. $\frac{1}{4}$); Southeast Quarter of Southwest Quarter (SE. $\frac{1}{4}$ SW. $\frac{1}{4}$); Southwest Quarter of Southeast Quarter (SW. $\frac{1}{4}$ SE. $\frac{1}{4}$), of Section Eleven (11), Township Fourteen (14) South, Range Three (3) East of the Willamette Meridian.

JOHN T. PARKER—North Half of Northeast Quarter (N. $\frac{1}{2}$ NE. $\frac{1}{4}$); Southeast Quarter Northeast Quarter (SE. $\frac{1}{4}$ NE. $\frac{1}{4}$); Northeast Quarter of Southeast Quarter (NE. $\frac{1}{4}$ SE. $\frac{1}{4}$) of Section Eleven (11), Township Fourteen (14) South, Range Three (3) East of the Willamette Meridian.

JOSEPH O. MICKALSON—West Half of East Half (W. $\frac{1}{2}$ E. $\frac{1}{2}$) of Section Ten (10), Township

Fourteen (14) South, Range Three (3) East of the Willamette Meridian.

JOSEPH H. STEINGRANDT—East Half of East Half (E. $\frac{1}{2}$ E. $\frac{1}{2}$) of Section Ten (10), Township Fourteen (14) South, Range Three (3) East of the Willamette Meridian.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that complainant recover of and from the defendants, its costs and disbursements herein taxed and allowed at \$1032.11.

Done and dated in open court at Portland, Oregon, this 20th day of October, 1910.

R. S. BEAN,
Judge.

Filed October 20, 1910. G. H. Marsh, Clerk.
[164]

And, to wit, on the 9th day of August, 1910, there was duly filed in said court the Testimony and exhibits taken in open court, in words and figures as follows, to wit: [165]

**[Testimony and Exhibits Taken and Introduced
Before the Court.]**

Portland, Oregon, Tuesday, April 26, 1910,
10 A. M.

(Title of Court and Cause.)

[Certain Offers in Evidence, etc.]

Mr. McCOURT.—If the Court please, in this case there are 17 entries involved. I think we can do away with the necessity of putting in all of the original papers. I may be able to use a sort of tabulated

statement I have here, similar to one put in in the other cases. This will do away with the original timber and stone filing papers. However, I desire to put in the fraudulent reports, similar to the ones offered in the other case.

Mr. UELAND.—May it please the Court, the defendants, Linn & Lane Timber Company, C. A. Smith and C. J. Swanson each object to the introduction of any testimony or evidence on the part of the complainants on the ground that it appears on the face of the bill that suit is barred by the Act of March 3, 1891.

Objection overruled; exception saved.

Mr. McCOURT.—We would like to have it appear in the record the dates on which the different parties filed in groups, so as to group the matter. Then there are three or four other entries that we want to show, in order to check up the amount of money paid by Kribs; for instance, the entries of Oliver Erickson, Jasper Keeney, Zillah Keeney, Antonio Steingrandt and William R. Mealey. We want to offer these entries for the purpose of checking [166] up the amounts of the money that was paid, and in connection with the testimony we will show that they were similar entries, so as to show the payments of Mr. Kribs, one of the defendants. That land is not included in the suit, but was taken at the same time, as we claim, under similar circumstances, and Mr. Kribs paid the Land Office fees the same date, and these entries go to make up the entire check.

Mr. UELAND.—Can't you show that orally? We will not object to that being oral when the time comes, if it will simplify the record.

Mr. McCOURT.—I think it will be simpler to put it in at once with the promise that we will supplement it by proof.

COURT.—Suppose you take the final papers and read the data from that.

Mr. McCOURT.—That is, perhaps, more satisfactory.

COURT.—Without putting the papers in evidence and it can then be checked up with the bill to see whether they compare or not.

Mr. McCOURT.—We will read *the* right into the record from the original. [167]

Mr. McCOURT.—There is some data that I wish to read in as I go along; for instance, the names of the proof witnesses.

O. J. Mealey, Foster, Linn County, Oregon.

Timber & Stone Sworn Statement No. 1023.

Covering the SW. $\frac{1}{4}$ Section 26, T. 14 S. R. 2 E.

Date, May 15, 1900.

Mr. UELAND.—I would suggest that you have in the bill Range 4. If you care to amend that in the bill, we have no objections.

Mr. McCOURT.—It may be understood that the bill is amended to conform to the facts.

COURT.—Very well.

O. J. Mealey's entry continued:

Proof, August 16, 1900.

Proof witnesses, John A. Thompson, William R. Mealey.

Final Certificate No. 8419, issued bearing date August 16, 1900.

Mr. UELAND.—You have that in the bill as October 9th.

Covering E. $\frac{1}{2}$ of NW. $\frac{1}{4}$, SW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ SW.
 $\frac{1}{4}$ of NE. $\frac{1}{4}$ of Sec. 24, T. 14 S. R. 4 E.

Dated, July 12, 1900.

Final proof, October 9, 1900.

Proof witnesses, William R. Mealey and O. J. Mealey.

Final Certificate No. 8508, dated Oct. 9, 1900.

John J. Gilliland, Sweet Home, Linn County, Oregon.

Timber & Stone Sworn Statement, No. 1142.

Covering NW. $\frac{1}{4}$ of Sec. 28, T. 14 S. R. 4 E.

Dated, July 12, 1900.

Final proof, October 9, 1900.

Proof witnesses, O. J. Mealey and Richard Watkins.

Final Certificate No. 8,511, dated Oct. 9, 1900.

William J. Lawrence, Sweet Home, Linn County, Oregon.

Timber & Stone Sworn Statement No. 1146.

Covering E. $\frac{1}{2}$ of SW. $\frac{1}{4}$, S. $\frac{1}{2}$ of SE. $\frac{1}{4}$, Sec. 20,
T. 14 S. R. 4 E.

Mr. UELAND.—We object to evidence being received concerning the entry of William J. Lawrence, on the ground that as to the patent and land connected with that entry there is a defect of the parties defendant in this: That it [169] appears by the bill that the entryman is dead, and neither his heirs nor legal representatives have been made a party to the bill.

Objection overruled; exception saved.

Mr. McCOURT.—(Continues with Lawrence entry:)

Dated July 12, 1900.

Final proof, October 9, 1900.

Proof witnesses, Richard Watkins, O. J. Mealey.

Final Certificate No. 8516, dated October 9, 1900.

Louis Maynard, Sweet Home, Linn County, Oregon.

Timber & Stone Sworn Statement No. 1150.

Covering W. $\frac{1}{2}$ of SW. $\frac{1}{4}$, NE. $\frac{1}{4}$ of SW. $\frac{1}{4}$, NW.
 $\frac{1}{4}$ of SE. $\frac{1}{4}$, Sec. 22, T. 14 S. R. 4 E.

Dated July 12, 1900.

Proof witnesses, Jake Gilliland and O. J. Mealey.

Final proof, dated October 9, 1900.

Final Certificate No. 8512, dated October 9, 1900.

Sydney H. Scanland, Foster, Linn County, Oregon.

Timber & Stone Sworn Statement No. 1145.

Covering W. $\frac{1}{2}$ of NE. $\frac{1}{4}$, NE. $\frac{1}{4}$ of NE. $\frac{1}{4}$ of
Sec. 28; NW. $\frac{1}{4}$ of NW. $\frac{1}{4}$ of Sec. 27, T. 14 S.
R. 4. E.

Dated July 12, 1900.

Final proof, October 9, 1900.

Proof witnesses, Richard Watkinde and O. J.
Mealey.

Final Certificate No. 8509, dated October 9, 1900.

Richard C. Watkinde, Foster, Linn County, Oregon.

Timber & Stone Sworn Statement No. 1148.

Covering W. $\frac{1}{2}$ of NE. $\frac{1}{4}$, SE. $\frac{1}{4}$ of NE. $\frac{1}{4}$, NE.
 $\frac{1}{4}$ of SE. $\frac{1}{4}$, Sec. 22, T. 14 S. R. 4 E.

Dated July 12, 1900.

In connection with this entry, the proof notice gives the date of proof as October 9, 1900. It appears in the record that on October 17th the entryman appeared and excused himself for not making proof on the 9th day of October, in the following language: "Final proof was set for and advertised to be made on the 9th day of Oc-

tober, 1900, but that owing to a disappointment in receiving money due me with which to complete said proof and payment, I was unable to make the said proof until this time, it being the earliest date on which proof could be made after receiving my money.''

Final proof, October 17, 1900.

Proof witnesses, William R. Mealey and O. J. Mealey.

Final Certificate No. 8522, dated October 17, 1900.

Richard F. Malone, Sweet Home, Linn County, Oregon.

Timber & Stone Sworn Statement No. 1143.

Covering NW. $\frac{1}{4}$ of Sec. 22, T. 14 S. R. 4 E.

Dated July 12, 1900.

Final proof, October 9, 1900.

Proof witnesses, William Mealey and O. J. Mealey.

Final Certificate No. 8510, dated Oct. 9, 1900.

[170]

Mr. LIND.—In connection with this Malone entry there is a special report. Do you plan to put that in evidence?

Mr. McCOURT.—I plan to put in the fraudulent claim report. That would include that, whatever it is. I will put that in afterwards.

James W. Rozell, Sweet Home, Linn County, Oregon.

Timber & Stone Sworn Statement No. 1151.

Covering N. $\frac{1}{2}$ of SE. $\frac{1}{4}$, N. $\frac{1}{2}$ of SW. $\frac{1}{4}$, Sec. 28, T. 14 S. R. 4 E.

Dated July 13, 1900.

Final proof, October 9, 1900.

Proof witnesses, O. J. Mealey and Louis Maynard.

Final Certificate No. 8517, dated October 9, 1900.

Cornelius N. Tuthill, Foster, Linn County, Oregon.
Timber & Stone Sworn Statement No. 1165.

Covering S. $\frac{1}{2}$ of SE. $\frac{1}{4}$ and Lots 3 and 4 of Sec.
18, T. 14 S. R. 4 E.

Dated July 19, 1900.

Final proof, October 9, 1900.

Proof witnesses, O. J. Mealey and William R.
Mealey.

Final Certificate No. 8513, dated October 9, 1900.

Jasper H. Keeney, Sweet Home, Linn County, Ore-
gon.

Mr. UELAND.—We object as not being involved
in the case.

COURT.—You explained a moment ago you ex-
pect to connect it with the case?

Mr. McCOURT.—Yes, I will connect it up.

Objection overruled; exception saved.

Mr. McCOURT.—(Continues Jasper H. Keeney
entry:)

Timber & Stone Sworn Statement No. 1147.

Covering E. $\frac{1}{2}$ of NW. $\frac{1}{4}$, E. $\frac{1}{2}$ of SW. $\frac{1}{4}$, Sec.
29, T. 14 S. R. 4 E.

Dated July 12, 1900.

Final proof, October 9, 1900.

Proof witnesses—I am unable to see their names
and will omit.

Final Certificate No. 8514, dated Oct. 9, 1900.

The land embraced in the latter entry is not in-
volved in this suit, but the record of the entry is
offered in evidence in order to connect up the pay-
ments made for the land by the defendant Kribs, and
the Government will show that [171] the entry
was made under similar circumstances to those here-

inbefore offered in evidence.

And now, if the counsel will permit us, I wish to offer for the same purpose that we offered the last entry, the record of the entry of William R. Mealey; entry of Oliver Errickson; George W. Pickens, Andrew Wiley and Zillah Keeney. We don't appear to have the original papers, but we have the books of the Land Office to show the same matters.

Mr. LIND.—Wouldn't your purpose be served by simply showing that those entries, if such be the fact, were made at the same time; final proof made at the same time—just that statement. If you make that statement into the record, we will not contradict it.

Mr. McCOURT.—Then we may have the record show that William R. Mealey, Antonio Steingrandt made entry on May 22, 1900.

Mr. UELAND.—Isn't that another date from those you have in?

Mr. McCOURT.—Yes, but the proof date is the same. The record will show that the proof date of said William R. Mealey and Antonio Steingrandt is August 16, 1900.

Mr. UELAND.—That is also a different date from the others, except Thompson.

Mr. McCOURT.—Thompson and O. J. Mealey made proof on that same date. Oliver Errickson, George W. Pickens and Andrew Wiley made entry June 14, 1900, and all of the last mentioned persons made proof on August 27, 1900. Zillah Keeney made entry July 12, 1900, and proof October 9, 1900.

That all of the last-mentioned entries embraced lands in the vicinity of the other lands upon which proof was [172] made upon the same days, re-

spectively, as the proofs in the last-mentioned entries.

Mr. UELAND.—You know that to be a fact?

Mr. McCOURT.—Yes, I have it right here.

Now, if the Court please, I would like to have the record show the amounts of the purchase price and fees upon each of the entries, which we intend to follow by check of the identical amount given by Mr. Kribs.

COURT.—As shown by the Land Office records?

Mr. McCOURT.—Yes, shown by the Land Office record. [173]

Mr. McCOURT.—August 16, 1900, Certificate No. 8419, O. J. Mealey, purchase price \$400, fees \$10.49; Certificate No. 8420, Antonio Steingrandt, \$400, purchase price, fees, \$10.56; Certificate No. 8421, William R. Mealey, purchase price \$400, fees \$10.48; Certificate 8422, John A. Thompson, purchase price \$400, fees \$10.51. Total, \$1,642.04.

You didn't give me that check, did you, Mr. Tanner?

Mr. TANNER.—Which is that?

Mr. McCOURT.—\$1,642.04.

Mr. TANNER.—Yes, I gave you that. No, that is the one I could not find.

Mr. McCOURT.—It will be admitted by counsel, I assume, that Mr. Krib's check for \$1,642.04—

Mr. LIND.—Let that stand until after recess.

Mr. McCOURT.—All right. At any rate, when we get that certificate, or that bank statement, that should go in in this case as well as in the other case to show those payments.

Mr. LIND.—Well, we will admit if it is the fact. We can probably ascertain at the noon recess.

Mr. McCOURT.—Very well. August 27, 1900, Certificate 8440, Andrew Wiley, purchase price, \$400, fees \$10.48. Certificate 8441, Oliver Erickson, purchase price \$402.03, fees, \$10.54. Certificate 8442, William W. Billings, purchase price \$400, fees \$10.52. Certificate 8443, Charles Wiley, purchase price \$400, fees \$10.45. Certificate 8444, Samuel D. Pickens, purchase price \$400, fees \$10.47. Certificate 8445, John T. Parker, purchase price \$400, fees \$10.55. Certificate 8446, Joseph O. Mickalson, purchase price \$400, fees \$10.49. [174] Certificate 8447, Joseph H. Steingrandt, purchase price \$400, fees \$10.48. Certificate 8448, George W. Pickens, purchase price \$400, fees \$10.45. Total, \$3,696.46.

Mr. McCOURT.—I offer in evidence check of Fred A. Kribs upon the First National Bank of Roseburg, dated August 27, 1900, payable to J. H. Booth or bearer, for \$3,696.46, endorsed by J. H. Booth. It may be offered without further identification?

Mr. LIND.—No objection.

Marked "Government's Exhibit 1."

Mr. McCOURT.—October 9, 1900, Certificate No. 8508, Alexander Gould, purchase price \$400, fees \$10.55. Certificate 8509, Sydney Scanland, purchase price \$400, fees \$10.51. Certificate 8510, Richard F. Malone, purchase price \$400, fees \$10.45. Certificate 8511, John J. Gilliland, purchase price \$400, fees \$10.51. Certificate 8512, Louis Maynard, purchase price \$400, fees \$10.54. Certificate 8513, Cornelius N. Tuthill, purchase price \$450.58, fees

\$10.52. Certificate 8514, Jasper H. Keeney, purchase price \$400, fees \$10.49. Certificate 8515, Zillah Keeney, purchase price \$400, fees \$10.57. Certificate 8516, William J. Lawrence, purchase price \$400, fees \$10.45. Certificate 8517, James W. Rozell, purchase price \$400, fees \$10.51. Total \$4,155.68.

Mr. McCOURT.—I now offer in evidence the memorandum of check of Fred A. Kribs dated October 10, 1900, First National Bank of Roseburg, Oregon, Paid Land Office for ten claims, and containing written across the face: "C.O.P. in C.A.S. acct."; also the words "On new bank [175] ledger" and "on Bank's acct.," \$4,155.68. Marked "paid October 10, 1900."

Marked "Government's Exhibit 2."

Mr. McCOURT.—I should have stated the mark of paid upon this other check (Government's Exhibit 1), that it shows upon its face, "paid September 1, 1900."

Mr. UELAND.—It does not look like Mr. Krib's signature.

Mr. LIND.—Well, it is a memorandum check anyway. He furnished the money apparently, whether he signed that slip or not. No objection to it.

Mr. McCOURT.—I presume it will be conceded that "C.A.S." upon the check is in Mr. Kribs' handwriting, and that it indicates C. A. Smith.

Mr. LIND.—No. That is in pencil, you know. It was evidently made at a later date. It is a memorandum. I cannot make any concession in regard to it. We know nothing about it. Mr. Kribs will explain that.

Mr. McCOURT.—I thought possibly you would, because Mr. Kribs testified in another case that C. A. S. meant C. A. Smith.

Mr. LIND.—Well, he possibly will testify then. But I know nothing about this memorandum.

Mr. McCOURT.—October 17, 1900. Certificate 8522, Richard C. Watkins, purchase price \$400, fees \$10.61. And in connection with the latter entry, we offer in evidence memorandum check upon the First National Bank of Roseburg, Oregon, dated October 17, 1900, on which are the words: “Paid Land Office on Richard C. Watkins, \$410.61. Charge Fred A. Kribs,” and having on the face of the same the further words [176] “C.O.P. C.A.S. deal. Also on Roseburg Bank acct.,” and the further words “New Bank Ledger,” marked “Paid” on the face, “October 17, 1900.”

Mr. UELAND.—Whose memorandum check do you claim it to be—the bank’s memorandum?

Mr. McCOURT.—I have an idea the bank.

Mr. UELAND.—I think it must be the bank’s memorandum.

COURT.—Is it admitted that Kribs’ signature is to that writing?

Mr. McCOURT.—No, I don’t claim it is. This was given me by Mr. Kribs. It is charged to his account, presumably.

COURT.—That is a memorandum the bank made?

Mr. McCOURT.—Yes. But I received it from Mr. Kribs’ possession, and the bank books show it charged to his account.

COURT.—This is the memorandum of the bank

made when it paid it out, and then returned to Kribs, I suppose.

Mr. UELAND.—Very evidently.

Mr. McCOURT.—Except the matter I read extraneous to the check itself, part of which I know to be Mr. Kribs' handwriting, part somebody else's.

Marked "Government's Exhibit 3."

Mr. UELAND.—We don't want it to go into the record that it is Mr. Kribs' memorandum, because we do not know it is, and we do not think it is.

COURT.—I understand you are not admitting anything. It is the bank's memorandum. That is all.

Mr. UELAND.—It is very evidently a memorandum the bank has made for paying out money without [177] regular checks, such as they do.

Mr. McCOURT.—They don't do it, though, without the depositor tells them to.

Mr. UELAND.—Probably not, no.

Mr. McCOURT.—I now offer in evidence reports of E. D. Stratford, special agent of the General Land Office, designated Report of Fraudulent Claim or entry in the following cases, each of which contains the affidavit of the claimant as follows: [178]

Mr. UELAND.—I want to enter an objection to that. Each of the defendants that we represent objects to that evidence on the ground that it is irrelevant and immaterial to any issues raised upon the pleadings, and has no tendency to prove any of the charges of fraud in the original entries, charged in the bill.

COURT.—Very well. The objection will be

overruled, and the evidence admitted.

Marked "Government's Exhibit 4."

Mr. McCOURT.—John J. Gilliland.

Marked "Government's Exhibit 5."

Mr. McCOURT.—William J. Lawrence.

Marked "Government's Exhibit 6."

Mr. McCOURT.—Richard F. Malone.

Marked "Government's Exhibit 7."

Mr. LIND.—In that case there is a special report covering all of the entries in the suit.

Mr. McCOURT.—That is what I am trying to get at. I see that 16 is the number of an answer.

Mr. LIND.—The number of the paragraph of the special agent's report.

Mr. McCOURT.—Yes, I see. This letter report containing general report, covering all the claims involved in this suit.

Marked "Government's Exhibit 7."

Mr. McCOURT.—Louis Maynard.

Marked "Government's Exhibit 8."

Mr. McCOURT.—Joseph O. Mickalson.

Marked "Government's Exhibit 9."

Mr. McCOURT.—Thomas Parker.

Marked "Government's Exhibit 10." [179]

Mr. McCOURT.—Samuel D. Pickens.

Marked "Government's Exhibit 11."

Mr. McCOURT.—J. W. Rozell.

Marked "Government's Exhibit 12."

Mr. McCOURT.—Sydney Scanland.

Marked "Government's Exhibit 13."

Mr. McCOURT.—Joseph H. Steingrandt.

Marked "Government's Exhibit 14."

Mr. McCOURT.—Cornelius N. Tuthill.

Marked “Government’s Exhibit 15.”

Mr. McCOURT.—Richard C. Watkins.

Marked “Government’s Exhibit 16.”

Mr. McCOURT.—Charles Wiley.

Marked “Government’s Exhibit 17.”

Mr. McCOURT.—John A. Thompson.

Marked “Government’s Exhibit 18.”

Mr. McCOURT.—O. J. Mealey.

Marked “Government’s Exhibit 19.”

Mr. McCOURT.—Alexander Gould.

Marked “Gov. Exhibit 20.”

Mr. McCOURT.—In the latter report there is no affidavit of claimant. [180]

[**Testimony of Fred Wodtli, for the Government.**]

FRED WODTLI, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Wodtli?

A. At Foster.

Q. Linn County, Oregon? A. Yes, sir.

Q. How long have you lived there?

A. The 10th of this month it was 15 years.

Q. Do you know John Thompson?

A. Yes, sir.

Q. Judd Mealey—O. Judd Mealey?

A. Yes, sir.

Q. Will R. Mealey? A. Yes, sir.

Q. Do you know Fred Kribs? A. Yes.

Q. When did you first become acquainted with

(Testimony of Fred Wodtli.)

Mr. Kribs? A. I think it was in 1900.

Q. Do you know what time in 1900?

A. It was in the spring.

Q. How long have you known O. Judd Mealey and Will R. Mealey and Thompson?

A. I have known them for 12 or 13 years.

Q. How near to you have they lived during that time?

A. Before they moved, when they lived up in the hills, why, it was about 6 or 7 miles. I think it was nearer seven miles than six.

Q. They moved. Where did they move to?

A. Well, first they moved—the Mealey brothers moved to Foster first, and then after awhile, Mr. Thompson he move to Sweet Home.

Q. How long ago was that? [181]

A. I couldn't give you the dates on that.

Q. Was that before 1900? A. No.

Q. Since that time?

A. It was since that time.

Q. Had you known them intimately prior to and including up to 1900?

A. Oh, just like a neighborhood is—they know each other, befriend each other, friendly.

Q. Now, you spoke of knowing Fred Kribs. Where did you meet him first?

A. The first time I seen him it was when he came down from the hills, and I went home from church.

Q. Who was with him? A. Mr. McKinley.

Q. Do you remember what month that was in?

A. I believe it was in April.

(Testimony of Fred Wodtli.)

Q. 1900? A. Yes.

Q. You say he had been up in the hills. What hills do you refer to? A. Above Foster.

Q. Are you acquainted with the vicinity in which the timber lands are that are involved in this case—14-2, 3, and 4, some? A. Some.

Q. Well, was it from that neighborhood he came?

A. I met him at Sweet Home, but I understood he was up in that vicinity.

Q. Do you live right at Sweet Home yourself?
[182]

A. Me? No, I live in Foster.

Q. Now, subsequent to that, or after that some little time did you know of Kribs' being up there?

A. No. I have not seen him after that till, oh, it was a long time—years after.

Q. Well, now, did you know at that time, say April or May, 1900, the financial condition of John A. Thompson, William R. Mealey and O. Judd Mealey, or either of them?

Mr. LIND.—That is objected to as immaterial in this case.

COURT.—What do you expect to show? What do you claim for this?

Mr. McCOURT.—Well, I expect to show that they were in no position to carry on timber operations of considerable magnitude, which they did a little later engage in.

COURT.—You expect to show that subsequently they did engage in such operations?

Mr. McCOURT.—Yes.

(Testimony of Fred Wodtli.)

COURT.—Very well. Upon that theory I will admit the testimony.

A. Why, they have always paid their debts when they dealt with me, and of course they knew my affairs as well as I did theirs, that we none of us was wealthy.

Q. Well, what I mean is, did they have any property or money?

A. Oh, they had hill ranches. That is all I knew.

Q. Did you know of Frederick Kribs and C. A. Smith and one or two other gentlemen, going into that timber there about the 22d or 23d or 24th of May, 1900? A. Only by hearsay.

Q. You did not know it yourself personally?
[183]

A. No. No, I have not seen none of them, but I heard it at the time.

Mr. McCOURT.—That is all. I will ask the witness when he heard that. When did you hear that?

Mr. LIND.—They did; you know. It was a notorious fact.

Mr. McCOURT.—I want to show it was about that date in May. I do not care what date in May.

Mr. LIND.—The record shows it was the latter part of May.

Mr. McCOURT.—Very well. That is all.

Mr. LIND.—No questions.

Witness excused.

Mr. McCOURT.—I may want to recall this witness a little later.

Mr. LIND.—Let me ask the District Attorney

(Testimony of William W. Billings.)

whether the last witness is the same person of that name who made an entry referred to in evidence.

Mr. McCOURT.—Yes. Yes, the same man.

Mr. LIND.—And the Government, I believe, has dismissed the suit as against him?

Mr. McCOURT.—Yes. The record shows that he paid his own money for the land. [184]

[**Testimony of William W. Billings, for the Government.**]

WILLIAM W. BILLINGS, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Billings?

A. About one mile from Foster.

Q. In Linn County, Oregon? A. Yes, sir.

Q. How old a man are you, Mr. Billings?

A. Past 70.

Q. Past 70? A. Yes, sir.

Q. How long have you lived up there in the vicinity of Foster?

A. In the place that I am in now, less than one year.

Q. Well, in that neighborhood?

A. In that neighborhood, about 20 years, I would think.

Q. Do you know O. Judd Mealey? Do you know Judd Mealey? A. I do, sir.

Q. William R. Mealey? A. Yes, sir.

(Testimony of William W. Billings.)

Q. John A. Thompson? A. Yes, sir.

Q. How long have you known those men?

A. I have known those men for about 17 or 18 years—maybe 20. I cannot tell exactly.

Q. What has been your business up there, Mr. Billings? A. My business?

Q. Yes. A. Ranching—small farmer.

Q. Have a small ranch up there?

A. Yes, sir, I did.

Q. Do you know Fred A. Kribs?

A. I have seen the gentleman once in my life only. [185]

Q. Where was that, Mr. Billings?

A. At Roseburg.

Q. When? What year was that?

A. I would think about '90.

Q. 1900? A. Yes, sir.

Q. And where did you see him at that time, Mr. Billings?

A. In the anteroom next to the office at the courtroom, across the corridor from where we made entry on our lands.

Q. In the same building?

A. In the same building; yes, sir.

Q. Were you introduced to him in that anteroom? A. No, sir.

Q. Have any conversation with him there?

A. No, sir.

Q. Did not. Who else was present there in that anteroom?

(Testimony of William W. Billings.)

A. One of the Mealey boys, and I don't know but two.

Q. Anybody else?

A. If there was they were strangers to me.

Q. You didn't know anybody else there?

A. No, sir. No, sir.

Q. What was your business at Roseburg at that time?

A. I think it was on my entry, but I am not certain. I am a little mixed in being to Roseburg twice, and still I know that I was at Roseburg twice, but I cannot remember incidents.

Q. You don't recall whether that was the time when you made entry or when you made proof?

A. Sir?

Q. You don't know whether that was the time you made entry or the time you made proof?

A. I do not; but I think it was the time I made entry. There was some trouble in the entry of the land was the reason of it. The land that I had gone there to [186] enter interfered with another man's rights, some way.

Q. And what was the purpose of going out there in that anteroom then?

A. To straighten this up—to straighten this tangle in the land affairs up.

Q. Did Mr. Kribs assist in straightening the matter up?

A. They changed my numbers in a measure.

Q. You took a different quarter than you went there to take?

(Testimony of William W. Billings.)

A. Yes, sir. Not a different quarter. No, excuse me. I took a different eighty. I held one eighty that I started to make my entry on.

Q. Do you recall what the trouble was with the other eighty?

A. I don't know. I think they claimed it belonged to the Northern Pacific.

Q. Well, now, prior to the time you had gone down there to enter, who suggested to you that you make an entry in the first place?

Mr. LIND.—Wait a moment. That is leading. This witness does not appear to be—

COURT.—State what occurred—how you came down to make the entry.

Q. You may state how you came to make an entry of lands down there in Linn County.

A. I knew that the boys in that vicinity were making entries on land. I was a very poor man. There was \$50 in it for me, which would help my family out. That is what I understood. So I went to Mr. Thompson myself,—my nearest neighbor—and asked him to make an entry on the land—asked him to put me onto a piece of land, if he could do so. He says: “Maybe I can later on,” [187] and it was some time before he did.

Q. Now, what were you to do for the \$50?

A. Sir?

Q. What were you to do for the \$50?

Mr. LIND.—I wish counsel would limit it to the conversation, not inferences. What was the talk between this witness and Thompson?

(Testimony of William W. Billings.)

Mr. McCOURT.—Very well. I beg your pardon. I am trying to get along too fast.

Q. Well, when did Mr. Thompson and you next talk about it, how long before you entered?

A. I should say it was about two weeks later that he told me that he would go up and show me a piece of land in the mountains.

Q. What else did he say about it?

A. Nothing that I know of. We just appointed the day to go.

Q. Well, what had he said to you before then, when he talked to you the first time, as to what the arrangement would be?

A. Nothing at all, only that he would put me onto land eventually, he thought.

Q. And what was he to get for that? What conversation did you have as to what he was to get and what you were to do?

A. We had no conversation about it whatever.

Q. Well, then, what did you do?

A. Why, I went to Roseburg with him, made an entry on said land, and after I had proved up, received \$50.

Q. Who paid your expenses to Roseburg each time? A. The Mr. Mealey's. [188]

Q. What connection did the Mr. Mealey's have with Mr. Thompson?

A. I could not tell you sir. They were in some kind of partnership in the arrangement.

Q. And do you know who attended to publishing the notice of final proof?

A. I don't remember now, sir.

(Testimony of William W. Billings.)

Q. Who informed you when it was time to go to Roseburg to make proof?

A. I think it was the Mealeys.

Q. What sort of conveyance did you take to get to Roseburg?

A. Took our own team as far as Lebanon. From there by rail.

Q. Who else were in the party?

A. Mr. Wiley, his son, who will be on the witness-stand. Mr. Parker, I believe, was with me; George Pickens; Samuel Pickens; Joseph Steingrandt. It seems as though there was one or two others, but I don't remember.

Q. State whether or not those parties were with you when you first went up there? A. Sir?

Q. When you went to enter, were the same parties along? A. Yes, sir.

Q. How long were you in Roseburg before you made proof?

A. I could not tell you. It was only a short time.

Q. Did anybody go along with you and give you any instructions as to how to make proof?

Mr. LIND.—Now, that is leading and improper. It is objected to for that reason.

Mr. McCOURT.—Well, I don't know but that was a leading question.

Q. Just tell what was done after you landed from the train [189] in Roseburg until you had made proof,—finished the transaction.

A. I cannot do it, sir. My memory is not good enough. I just remember that we went, after I had got my papers fixed out, that we went into a room,

(Testimony of William W. Billings.)

into a little small space, like a prisoner's box, something, and there we held up our hands. I am quite deaf, and we held up our hands, and the man read over something so rapidly that I could not get one word of it. I don't know what it was. We all held up our hands, all together.

Q. Then what did you do?

A. Filed out of the room; went back to quarters, and from there home.

Q. Now, then, who was there besides you men that were making proof?

A. No one was in there except the officers of the Land Office; the officers of the Land Office, the other side of this railing, that railed us off.

Q. Did either of the Mr. Mealeys or Mr. Thompson accompany you to the Land Office when you went there?

A. They went to the Land Office with us.

Q. Where were they when you were making this proof, holding up your hands and being sworn?

A. I could not tell you. I couldn't tell you.

Q. Were any questions read to you?

A. We were in the building. That is all I know.

Q. Were any questions read to you? I say were any questions read to you?

A. I don't think. If there were I don't remember.

Q. Did you answer any? How is that?

A. If there were any questions asked us, I don't [190] remember it.

Q. Now, when you filed out, where did you go?

A. Sir?

(Testimony of William W. Billings.)

Q. When you went out of the Land Office, where did you go? A. To the hotel.

Q. What occurred there, if anything? Did anything occur there?

A. Excuse me, I cannot hear.

Q. I say did anything occur there in relation to the transaction? A. No, sir.

Q. You mentioned getting \$50. When did you get that? A. After I had made out the deed.

Q. When did you make the deed?

A. About—oh, it might have been two or three weeks later. Yes, it was more than that. It was more than that. It was some little time later.

Q. Well, did you make any other papers in regard to the land?

A. Yes. There was a mortgage made before the deed.

Q. Where did you make that mortgage?

A. I cannot tell you, for I don't remember it. I think it was made before Mr. Buck of Sweet Home, but I am not positive. He was a man that I made out papers before frequently.

Q. When did you get the \$50, when you signed the mortgage, or when you signed the deed?

A. No, sir. When I transferred the deed to Mr. Mealey.

Q. Whom did you mortgage the land to?

A. Well, that I could not tell you now.

Q. Whom did you deed it to?

A. I don't know who the deed run to even, now.

[191]

Q. Did you know at that time?

(Testimony of William W. Billings.)

A. I did at that time, yes, sir. But it is 10 years ago, and my memory is rather faulty.

Q. Did you know Mr. Kribs in the transaction?

A. Only just that he was overlooking these papers of mine. I was told that it was Mr. Kribs afterwards. I had no acquaintance with him whatever, but as we were changing these papers around, he gave some word to the Mealey boys about it.

Q. Did you have anything to do with that at all?

A. Nothing at all, no, sir.

Q. Did you ever know a man by the name of John H. Shupe? A. No, sir.

Q. Do you have any recollection of going into a lawyer's office or some kind of an office near the Land Office after you made the proof, and signing that mortgage?

A. Never did. No, sir, I didn't.

Q. Now, Mr. Billings, how long before you made your filing if at all, was it that you had your understanding with the Mealey boys and Thompson, that you were to receive the \$50?

A. I understood that before I ever entered the land, sir.

Mr. LIND.—Wait a moment. That is putting words in the mouth of the witness that are not in testimony. The witness has specifically testified that he only had a conversation with Mr. Thompson. I object to it as leading, improper and suggestive.

COURT.—The witness has not referred to any conversation he had with the Mealey boys at all. He said he understood he was to get \$50, but he has not disclosed from where he got the information. [192]

(Testimony of William W. Billings.)

Q. Well, I will ask him—just tell the Court about that \$50, in your own way, all about it, Mr. Billings.

A. About the \$50?

Q. Yes.

Q. Why, I simply received the \$50 after I returned the deed to Mr. Mealey. That was all there was about it, and as for the understanding before, I never heard Mr. Mealeys or Mr. Thompson say that they would give me \$50 if I would enter the land. It was just merely understood by all the men of the country that there was \$50 in it if we took land.

Q. Well, now, what did you say to Thompson when you went to see him? A. Sir?

Q. What did you say to Thompson when you went to see him?

A. There was nothing said about the money whatever.

Q. What did you say?

A. Why, I asked him merely to put me upon a piece of land. And he told me—he says: “I don’t know.” He says, “Maybe I can eventually.” Probably hadn’t the land—run out—didn’t know where he could locate me at the time. It was three or four weeks before he did locate me.

Q. What was that understanding in the community there as to what should be done to earn the \$50?

Mr. LIND.—One moment. That is objected to as incompetent, irrelevant, and leading.

Mr. McCOURT.—If the Court please, in this case, the defense is, or will be, that it was generally understood among entrymen, or that is among the people, that they could [193] take up a timber claim, and

(Testimony of William W. Billings.)

that they could go and sell it to Mealeys and Thompson and get \$50 for it. Now, I want to show, first, what that understanding was, if there was such an understanding, and the fact that it was circulated by the Mealey boys among this little community, consisting of a few people only, who were very poor, who would jump at the chance to earn \$50; and that these people came to the Mealey boys—the Mealey boys knowing that they understood, when they came to them, that if they did locate them, that they located them upon condition that the land be deeded to the Mealey boys, and I take it that such an arrangement is not a legal one,—where the advertisement is given out for the purpose of getting those fellows to come in there, and they show when they get there, that they have heard this little report that the Mealeys put out, then they come there, and the Mealeys put up all the expenses, handle the people really as mere instruments, in taking more than 160 acres of land, to wit, 1760 acre tracts in this case for the same people to wit: Fred A. Kribs, C. A. Smith Lumber Company, or C. A. Smith perhaps, and the other defendants involved in this case. I want to get that out fully. It, by leaving a part of it out, might be a legitimate arrangement.

Mr. LIND.—Your Honor, it would be manifestly unfair to the defendants in this case, to have such rumors go into the record, if there were any. Now, as a matter of fact, the conditions were very different as the testimony will disclose, and as it has already disclosed, in the reports before your Honor. [194] There was a general scurry among claimants, the

(Testimony of William W. Billings.)

Northern Pacific Company was locating land, these settlers had been there a great many years, the Mealeys had helped in the surveys, and they were familiar with the lands. These old settlers wanted to get a piece of timber land.

Mr. McCOURT.—No, they did not. They wanted to get \$50.

Mr. LIND.—I grant that the money end was what they had in view. That is not true of all of them. It is true of some of them. The Mealeys were the ones who were familiar with them—helped the Government survey, cruised the land, and they went and got them to locate them. The Mealey boys did and Thompson did locate them, raised the money and subsequently the entries were shown. And when it came to that part of the transaction, I think it will become very apparent to the Court that some of these mountaineers perhaps were displeased somewhat, got the short end of the bargain. But I object to any evidence except facts. That we want to get. We want every scrap of fact.

COURT.—I think the circumstances under which these people made their filings, or made their entries, what prompted them to make them is competent in this case for the purpose of tending to show that the original transaction had its inception in fraud. If these people entered this land for the purpose of conveying the title to someone else, then it was not a *bona fide* entry, and would be fraudulent as far as they were concerned. Therefore, I suppose it is competent in the case for the Government to show the rumors or reports in the [195] community

(Testimony of William W. Billings.)

that induced these people to act for the purpose of determining their attitude in the matter, and what they were attempting to do. I suppose the Government has a right to show what motives or understanding or influences operated upon these people—whether it was an honest desire to get this land for themselves, or to be a mere conduit, through which the title should pass to somebody else, and they receive the \$50. For this reason the Government has a right to examine this witness upon that question.

Whereupon recess was taken until 2 P. M. [196]

Portland, Oregon, April 26, 1910, 2 P. M.

WILLIAM W. BILLINGS, resumes the stand.

Direct Examination (Continued).

Q. (Read.)

Mr. LIND.—That, I believe, was objected to as leading, and as assuming a state of facts of a rumor in the community which is not shown to have been current.

COURT.—The objection is overruled.

A. Well, the sale of the land—I sold the land for \$50.00.

Q. You spoke of an understanding in the community there. What was that understanding as to what you should do in order to get the \$50?

A. Deed them the land.

Q. Who?

A. Well, I don't know who I deeded it to, sir. I don't know who I deeded it to, now.

Q. I understand, but who was it the understanding that the land was to be deeded to, there in the community?

(Testimony of William W. Billings.)

A. Who was it that it should be deeded to? I don't know. I don't know whether there was any understanding. Mr. Kribs, I suppose, was the man that it was going to—all supposed that it was going to him. These others were mere locators.

Q. Well, who were these others with whom you had to have the transaction?

A. Mr. Mealey, Mr. Thompson.

Q. Do you recall, Mr. Billings, having made an affidavit at the house of Fred Wodtli some time later, in regard to that claim? A. I do.

Q. State the circumstances under which that was made, and under which you went to Wodtli's house.
[197]

Mr. UELAND.—Will you please fix that time, Mr. District Attorney?

Mr. McCOURT.—Yes, I will fix it.

A. I don't know, but I think it was Mr. Mealey's.

Mr. UELAND.—Just wait a minute.

COURT.—Just wait a minute.

Q. Do you remember about the date that was?

A. I do not.

Mr. UELAND.—Fix it in your question. That will be satisfactory.

Mr. McCOURT.—Well, let me get the date then. The affidavit I speak of purports to have been made on the 7th day of November, 1901.

Mr. UELAND.—The defendants we represent object to that as immaterial, and as not tending to prove any of the averments in the bill as to fraud in the original entry.

COURT.—The objection will be overruled. That,

(Testimony of William W. Billings.)

I understand, is the report of the Special Agent, that was introduced in evidence.

Mr. McCOURT.—Yes, your Honor.

Q. Now, state the circumstances, Mr. Billings, under which you went to Wodtli's house to sign that affidavit, or make it, and what occurred there.

A. I received word, I think it was through the Mealey's, but I am not certain, to put in an appearance there, at this time that you mention, I suppose, and did.

Q. Go ahead and state what occurred when you got there.

A. We stood around the yard for two hours or more, I think, before I was called, and when I went in I gave in my evidence, as you have it there, as you have it in writing now.

Q. Who was there when you went into the house to give your evidence? [198]

A. I don't know those officers, sir. I never did know them.

Q. How many persons were there?

A. No one except the officers and Mr. Wodtli's—part of Mr. Wodtli's family. There was two officers. I don't know who they were.

Q. Two went in at the same time you did?

A. Sir?

Q. You say there were two officers?

A. No, no. There were two officers in there—I don't know who they were—and the stenographer.

Q. Do you recall, Mr. Billings, stating at that time that you had paid John Thompson \$40 or \$50 for locating you?

(Testimony of William W. Billings.)

A. I don't remember anything about it, no, sir.

Q. Don't remember that? A. No.

Q. Do you remember anything about stating the amount that you had received for the land?

A. I think it was \$650—maybe \$700.

Q. Do you recall now why you made that statement? A. Through questions.

Q. What? A. Through being questioned.

Q. Well, have you received any such sum for the land? A. I had not.

Q. I will ask you if Mr. Mealey—Mr. Judd Mealey, Mr. William Mealey, and Mr. Thompson, were there at that time at the Wodtli's house?

A. I don't think Mr. Thompson was there; as near as I remember he was not.

Q. What about the Mealey brothers?

A. Both the Mealey brothers were there.

Q. Did you and the other persons there at that time have [199] any conference with the Mealeys before you went into the room to make the affidavit?

A. No, sir, I did not.

Q. How many other persons were there at that time?

A. Well, I would say there were about 20.

Q. Can you name them? A. No, I cannot.

Q. Did you receive any compensation for making that affidavit, Mr. Billings?

A. About \$3.00, I believe; \$3.00 or \$4.00 at the outside.

Q. Who paid that to you?

A. That was just for my board and day's labor. I think William R. Mealey paid it to me. He gave it

(Testimony of William W. Billings.)

to me. He says, "That will do for your day's board."

Mr. McCOURT.—I offer in evidence a mortgage bearing date the 27th day of August, 1900, William W. Billings to Frederick A. Kribs, purporting to secure a note for \$600, payable ninety days after date, covering the land included in Mr. Billings' entry.

Marked "Government's Exhibit 21."

Mr. McCOURT.—I now offer in evidence a deed of William W. Billings and Sarah R. Billings, his wife, to Frederick Kribs, for the same land, bearing date the 1st day of September, 1900.

Marked "Government's Exhibit 22."

Mr. McCOURT.—Both of the last instruments offered being certified copies of the public records of said mortgage and deed, of Linn County.

Cross-examination.

(Questions by Mr. LIND.)

Mr. Billings, you spoke about an [200] understanding in the neighborhood. Who spoke to you about the matter, if you recall?

A. I couldn't tell you, sir. It was generally spoken of among the people there. I could not tell you where I first heard it.

Q. What was that that was generally spoken of among the people?

A. Well, if we would take this land that we could receive \$50 for it; if we would take this land and deed it over, we could receive \$50 for it. If we didn't take it, it lay there intact, and nobody got anything for it in the country of the poorer class.

Q. You said you heard something about Kribs buying land. When did you first hear of that?

(Testimony of William W. Billings.)

A. I don't know. It was something about that same time.

Q. Well, about the time you made your proof?

A. No, about the time that we were taking this land.

Q. Well, did you agree to sell it to Kribs?

A. We were to sell it to anybody that would buy it, yes, sir.

Q. But you never agreed to sell to Kribs?

A. I never did at that time, no, sir.

Q. Did you agree to sell to anybody until you made your deed?

A. No, sir. But I knew I would have to, because I could not pay out on the land.

Q. And you were willing to?

A. I was willing to, yes, sir.

Q. If you had not sold, you would probably have lost it on the mortgage?

A. I certainly would have done so.

Q. Did you know how much the land would cost at the Government price? [201] A. \$250.

Q. How much an acre?

A. No, I am mistaken. It was \$2.50 an acre.

Q. And how many acres in your entry?

A. 160 acres.

Q. That would be \$400? A. Yes, sir.

Q. Besides the fees?

A. Yes, sir. From all I was worth in the world, I could not have raised that \$400.

Q. And still you wanted the benefit of your land right? A. Certainly.

Witness excused. [202]

[**Testimony of John T. Parker, for the Government.**]

JOHN T. PARKER, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Parker?

A. Well, sir, I don't live anywhere, particularly.

Q. Where were you living in 1900?

A. I was living up in Sweet Home.

Q. Right at Sweet Home?

A. Yes, right at Sweet Home?

Q. And how long had you been living there at that time? A. Oh, about five or six years.

Q. Do you know William R. and Judd Mealey?

A. Yes, sir.

Q. Do you know John Thompson?

A. Yes.

Q. Did you know them at that time?

A. Oh, yes.

Q. Did you know Frederick Kribs at that time?

A. No, sir.

Q. When did you first meet him?

A. Well, the first time I seen Mr. Kribs, he was pointed out to me on the train and they said it was Mr. Kribs. That is all I knew about it.

Q. Where were you going, when you saw him on the train? A. I was going to Roseburg.

Q. For what purpose?

A. I don't remember now whether it was to file on the land, or whether it was to prove up,—I couldn't say—one or the other. [203]

(Testimony of John T. Parker.)

Q. Who pointed him out to you?

A. Well, now, I am not able to answer that question.

Q. Was William R. or Judd Mealey on the train at that time?

A. Yes, sir; I think they was both on.

Q. Do you remember the incident of Frederick A. Kribs and C. A. Smith coming out there to Foster or Sweet Home in the latter part of May, 1900, to look at timber?

A. No, sir. I never heard of Mr. Smith.

Q. Didn't know him at all? A. No, sir.

Q. You took up a timber claim up there, didn't you? A. Yes.

Q. Sometime in 1900? A. Yes.

Q. Please tell the Court the circumstances leading up to your taking the claim, the different steps that you took in it as it progressed.

A. I would hate to undertake to tell all the steps.

Q. Well, tell all you can think of.

A. Well, I don't know—it has been so long ago, I don't remember very much about it. I know that I went out there and took up a claim, and that is about all.

Q. Whom did you see before you went out to take it up?

A. I don't know. I seen several men.

Q. Well, did you see John A. Thompson or Judd or Will Mealey?

A. I saw William Mealey. He went out in the timber with us.

Q. Well, did you have any conversation with Mr.

(Testimony of John T. Parker.)

Mealey, or either of the Mr. Mealeys, or Mr. Thompson, relative to taking up the claim, before you went to take it up?

A. Oh, no; only just simply I told them I wanted to go with them when they went out to take up a timber claim.

Q. And what led you to go and tell them that?

A. Well, because I wanted a timber claim.

[204]

Q. Well, you went out to see the claim with them?

A. Yes, sir.

Q. Which of the Mealey boys went to see the claim? A. William.

Q. And what did you do after you saw the claim?

A. Went back home.

Q. Well, how long after that was it before you went to Roseburg?

A. I couldn't say. I don't remember much about that. I don't know just how long it was.

Q. Well, about how long?

A. I thought it was fourteen months; but I heard since I come to Portland it was only about fourteen weeks.

Q. Well, but you went to Roseburg twice, didn't you?

A. Yes, sir. Oh, you mean before we went to file?

Q. Yes, when you went to file.

A. I suppose it was about ten days—something like that.

Q. Well, now, how did you get to Roseburg?

A. Well, I went part of the way by land, and the

(Testimony of John T. Parker.)

other part by railroad.

Q. And what part did you go by team?

A. We went—let's see. When we went to file we went to Lebanon by team, and then from there to Albany and back on the train.

Q. Whose team did you take to Lebanon?

A. Well, for myself I went on the stage, on the United States mail stage.

Q. Who was in the party, when you got on the train, that you went in?

A. Well, as near as I remember, there was William and Judd Mealey, and Mr. Billings and Joe Steingrandt, and I [205] don't remember now whether Mr. Mickalson got on the train that we did or not.

Q. Mr. Who?

A. Mr. Mickalson. But there was Charlie Wiley and Andrew Wiley and myself and Mr. Billings and Joe Steingrandt, if I remember right.

Q. Quite a number of you? A. Yes.

Q. And how long did you stay in Roseburg?

A. Well, we got to Roseburg some time in the night, and we left there the next evening, I think, or the next morning. Stayed over night, I believe, though. I would not be certain about that.

Q. What did you do during the day you were there?

A. Well, I would hate to tell that.

Q. Well, did you go to the Lond Office?

A. Yes.

Q. That is all I want to know. I don't care what else you did.

(Testimony of John T. Parker.)

A. Yes, went to the Land Office. Went to saloons a good many times.

Q. Well, did you go to the Land Office?

A. Well, we went to the Land Office, I think, about nine o'clock in the morning, if I remember right, and there was quite a crowd there, and we had to wait. I think it was afternoon, if I remember right.

Q. Did you file on the land while you were there?

A. Yes, sir.

Q. How did you secure the numbers of the land upon which you made your filing, and whom from?

A. From William Mealey.

Q. Who paid your expenses on that trip? [206]

A. Well, now, that is a pretty hard question for me to answer.

Q. Well, did you pay them?

A. No, I didn't pay them myself.

Q. Did you have anything to do with publishing the notice of when you should make proof?

A. No.

Q. Who attended to that?

A. I couldn't say.

Q. How is that? A. I couldn't tell you.

Q. Who, if anybody, informed you when it was time to make proof?

A. Well, I think Mr. Mealey.

Q. Which one of the Mealeys?

A. William.

Q. William? A. Yes.

Q. Well, after you were notified that it was time to make proof, what was the next? What was the

(Testimony of John T. Parker.)

proceeding then?

A. The proceeding then was to go to Roseburg and prove up.

Q. Did the same party go that had gone with you on the filing trip? A. Yes, sir.

Q. Were the Mealey boys along, and Mr. Thompson?

A. Yes, I think so, yes. I think they were there.

Q. How long did you stay in Roseburg that time?

A. Well, I think we got there along in the morning, and we come back the same evening—I think we did—the same night.

Q. Well, describe what you did in making proof, now, how it was done, and who officiated at it, and all about it.

A. You mean who we proved up before?

Q. Yes, and how you went in there, whether you went in one at a time or a dozen at a time, or how you did it. [207]

A. Well, I went in one at a time. I proved up before a lady—I don't know who it was.

Q. Did the other gentlemen who went up with you all go to the Land Office at the same time you did? A. Oh, I think so, yes.

Q. They were there waiting to make their proof?

A. Yes.

Q. Where were the Mealey boys and Thompson during this episode?

A. I don't think—I don't remember whether Mr. Thompson was with us on that trip or not. I couldn't say.

Q. After you had made your proof, what did you

(Testimony of John T. Parker.)

do? A. I went home as quick as possible.

Q. Well, did you go anywhere after you left the Land Office?

A. Oh, yes, went back to the hotel.

Q. Did you go into any office or little room anywhere? A. Yes, I think we went into a room.

Q. Who was in that room?

A. Well, Mr. William Mealey, if I remember right, and another gentleman,—a lawyer or something; I don't know what.

Q. Was Fred Kribs there?

A. No, sir, I didn't see Mr. Kribs.

Q. Didn't see Mr. Kribs? A. No, sir.

Q. Do you remember what this lawyer's name was? A. No, I do not, no.

Q. Was that in the same building in which you had made proof? A. Yes, I think so.

Q. What did you do in this lawyer's office?

A. Well, I signed the deed to the land.

Q. How long would that be after you had made proof?

A. Well, I don't know just how long it was. Not long.

Q. You walked right out of the Land Office into this other [208] office, didn't you?

A. I think so, yes.

Q. And when you signed the deed, what did you receive, if anything? A. I received \$50.

Q. Who paid it to you?

A. William Mealey paid me the money.

Q. How did he pay it—by check or cash?

A. He just handed me the money.

(Testimony of John T. Parker.)

Q. In the presence of the lawyer?

A. Well, I could not say now as to that. I don't think so.

Q. Were there any of the others there, of your neighbors, in there at the same time you went in to make your deed? A. No, sir.

Q. Where did you go when you got your deed made? Did you wait around there for the others or go away?

A. I went right down back to the hotel.

Q. Who paid your hotel bill?

A. I couldn't tell you.

Q. Don't know? A. No.

Q. Did you come on back home then?

A. Yes, sir.

Q. Before you went to see the Mealey boys about taking a claim, had anyone talked to you, or had you heard anyone talking about the amount of money that you might receive for taking a claim?

A. Yes, I heard several people talking about it?

Q. Who?

A. Well, I couldn't tell who they was. A good many come up from here, and a good many came up from Salem, [209] to take timber claims, and myself and Mr. Wiley talked between ourselves most about it. And he says, "What is the use of us sitting here and all these people coming in, inquiring here and taking up all this land, and we get nothing out of it"? He says, "We just as well have \$50 as to wait here till it is all gone, and get nothing." I says, "Very well, the first time I see the Mealey boys I will tell them I want a claim." And he says, "All

(Testimony of John T. Parker.)

right." That is about all there was to it. When they got ready to go into the timber, they let us know, and we went with the crowd.

Q. What was it understood that you were to do in order to get the \$50?

Mr. LIND.—Now, wait a moment. That is not a proper question.

Mr. McCOURT.—I withdraw that now, just a moment. I will change the form.

Q. What was it reported that you would have to do in order to get the \$50?

A. Well, it was reported that we would have to take up the claim, and file on it, and prove up on it, and get a patent before we could sell it to anybody.

Q. What were you to do to get the \$50?

A. What did I do?

Q. What was the \$50 to be for?

A. Well, I suppose it was to be for the claim. I don't know.

Q. Now, that report was the occasion for your going to see the Mealey boys? Do you recall, some year or so later—I will direct your attention to the date, 11th day of November, 1901, appearing at the house of Fred [210] Wodtli in connection with that claim?

A. Yes, sir. I don't know what time in the month it was.

Q. What caused you to go there?

A. Well, I was sent for to come there.

Q. Who sent for you?

A. The Mealey boys, I suppose. I don't know.

(Testimony of John T. Parker.)

Q. What occurred when you got there, and who was there?

A. Well, I don't remember who was there. There was some officers there.

Q. How is that?

A. There was some officers there.

Q. How long did you remain there?

A. Oh, two or three hours, I suppose; something like that.

Q. And what did you do while there?

A. I made out an affidavit for the land.

Q. Did you have any conversation with anybody in relation to the affidavit you were to make, before making the same?

A. Yes. I and William Mealey talked about it as we went down from Foster down to the house.

Mr. LIND.—I could not hear the witness. What was your answer?

A. I say, Mr. William Mealey and I talked about it on the road down from Foster, down to Mr. Wodtli's.

Q. How far was it from Foster to Mr. Wodtli's?

A. Oh, I suppose it was about half a mile.

Q. Did Mr. Mealey discuss with you what answers you should make in your affidavit?

A. Yes, he told me how to answer the questions.

Q. Did he have a form of affidavit with him?

A. No.

Q. What did he say they would ask you about?

[211]

A. Well, he said they would ask me where I got

(Testimony of John T. Parker.)

the money, and how I got the money to prove up.

Q. Do you know who you deeded the land to?

A. No, sir, I do not.

Q. How is that? A. No.

Q. Did Mr. Mealey make any statement to you as to what you should say in regard to a location fee? A. Yes.

Q. What did he tell you?

A. He told me to tell them that I paid \$50 for locating me.

Q. You hadn't paid any \$50 location fee, had you? A. No, I hadn't paid anything.

Q. What did he tell you to say in regard to the amount of money you had received for the land, if you remember?

A. That I had sold stock, cattle, and horses and hogs.

COURT.—Speak a little louder.

Q. Speak a little louder.

A. That I sold cattle and horses and hogs to pay for the land.

Mr. LIND.—I can't hear one word of that.

COURT.—Speak a little louder. The Governor can't hear it.

A. I say, he said to tell them I had sold stock to pay for—to get the \$400—cattle and horses and hogs.

Q. What did he tell you to say as to the amount you had received for the land when you sold it?

A. There was nothing said about that; nothing said about that.

(Testimony of John T. Parker.)

Q. Do you recall answering the special agent there [212] that you had received \$840 for the land?

A. I don't think so. I don't think I was ever asked that question. Not that I remember of.

Q. Did you see Mr. Kribs at all in relation to deeding your land? A. No, sir.

Q. I notice in your affidavit here you answer that it was a Seattle man you sold those hogs to. Did Mr. Mealey tell you to tell that? A. No.

Q. That was your own?

A. That was my own.

Q. You sign with a mark, don't you, Mr. Parker?

A. Yes, sir. Yes, that is all right. (Speaking of mark on paper.)

Q. I notice upon this affidavit that there is a party by the name of J. Van Zante appears as a witness, together with William R. Mealey, to your mark. Do you remember any such person being there? A. No, I don't remember.

Q. How many men were there in the room where you gave the affidavit?

A. I don't remember now.

Q. Was there more than one?

A. Yes, there was more than one.

Q. More than two?

A. Yes, I think there were three or four, anyway.

Q. Was Mr. Mealey in there when you gave your affidavit? A. I think so, yes.

Q. Which Mr. Mealey?

(Testimony of John T. Parker.)

A. I think William was there in the room somewhere. [213]

Q. (Mr. McCOURT.) I offer the deed in evidence in connection with this entry. The deed is the 27th day of August, 1900.

COURT.—Was there any mortgage in this case?

Mr. McCOURT.—No mortgage, apparently.

The deed is marked "Government's Exhibit 23."

Q. Was there any lady there when you took that affidavit? A. No.

Q. Running the typewriter?

A. The typewriter, that is all.

Q. Did you know who she was?

A. No, sir.

Q. Do you know now? A. No, sir.

Q. What, if anything, did you receive when you gave that affidavit?

A. I didn't receive anything, that I remember of.

· Corss-examination.

(Questions by Mr. LIND.)

Mr. Parker, when you and Will Mealey were going over to the place where you made this affidavit, were you talking seriously or joshing?

A. Well, I don't know; we was just laughing and talking.

Q. Well, isn't it a fact, that you said between you, back and forth, that if this special agent went to asking any funny questions, you would give him funny answers? A. That is what he said.

Q. How?

A. That is what he said. He told me just what

(Testimony of John T. Parker.)

questions they would ask me, and what I should say. [214]

Q. Well, you suggested it yourself that you would handle them? A. No, sir.

Q. Didn't you say to Will Mealey that if he went so asking funny questions, you would answer him in the same strain, or words to that effect?

A. Well, I might have said if they went to asking questions that they had no right to ask, I might answer them.

Q. Now, did you understand in that conversation that Will Mealey wanted you to swear to any falsehoods?

A. Well, I don't—no, not particularly, no; I don't know as he did.

Q. No, I suppose not. You say you made your deed at Roseburg? A. How is that?

Q. You made your deed, after you had made your final proof at Roseburg? A. Yes, sir.

Q. Who spoke to you about making that deed?

A. Well, sir, I don't remember now.

Q. Wasn't it Will Mealey?

A. I think so, yes.

Q. What did he say to you?

A. Why, he said that I could come and sign the deed now.

Q. Didn't he tell you that money to pay for the land had been raised either by deed or mortgage?

A. I don't remember whether there was anything said about a mortgage or not. I don't remember. I don't think so.

(Testimony of John T. Parker.)

Q. You know some of them raised the money by giving a [215] mortgage?

A. Yes, I know some of them did.

Q. And some of them sold right on the spot?

A. Yes.

Q. Had Will Mealey ever said one word to you about selling, or about a deed, before that time?

A. No, sir; no.

Q. Had anybody else? A. No; no.

Q. Now, who is Wiley? You said you and Wiley had a talk about using your timber claim rights.

A. That is an old gentleman that I had known for years, but he is dead now.

Q. He is dead now? A. Yes.

Q. Did he also take a claim?

A. Yes, he went right along with the crowd.

Q. How long was that before you went to see Mealey?

A. Oh, we talked about that for a month or two.

Q. What was your object? Why did you talk about it?

A. Well, I didn't have any much idea of taking up a timber claim for a long time. I didn't know whether I would be doing something wrong or not, or whether it was all right. And him and I talked it over, and he says, "The Government gets its money for the land." "Well then," I says, "I reckon we won't be doing anything wrong if we take up a claim."

Q. You didn't intend to do anything wrong?

A. No, sir. If I had, I wouldn't have taken up the claim.

(Testimony of John T. Parker.)

Q. No.

A. If I thought I was swindling the Government, out of anything. But I supposed when it got its money, the price, that that settled it. [216]

Q. And you felt that you could make some profit on it for yourself? A. Yes, sir.

Q. And you had never exercised your right, and everybody was taking claims, and you wanted to get in yourself, and get a claim?

A. That is it exactly; because they was going every day right out from under our nose. We sat there till all the good timber was gone before we ever made an effort—people coming in from the east and taking it up.

Redirect Examination.

Q. Didn't Mr. Mealey also tell you not to answer any more than you could help when you were before that special agent? A. No, sir.

Q. Say just as little as you could get through with?

A. I don't think he ever said anything about that at all. I don't remember, if he did.

Q. You were not married at that time, were you?

A. No, sir.

Witness excused. [217]

[**Testimony of William J. Lawrence, for the
Government.**]

WILLIAM J. LAWRENCE, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Lawrence?

A. Foster, Linn County, Oregon.

Q. How long have you lived at Foster, Mr. Lawrence?

A. Oh, about 14 years.

Q. And were you living there in 1900?

A. Yes, sir. No, I lived at Sweet Home in 1900.

Mr. UELAND.—Ask him how far Sweet Home is from Foster.

Q. Yes, how far is Sweet Home from Foster?

A. Three miles.

Q. West or east? A. West.

Q. Do you know William R. and Judd Mealey and John A. Thompson? A. Yes, sir.

Q. Did you know them in 1900?

A. Yes, sir.

Q. And prior thereto? A. Yes, sir.

Q. How far did the Mealey boys live from you?

A. I don't remember whether they lived up on their hill ranch then, or not. If they did, why they lived about 12 miles. Yes, they lived about that far away. I remember now that they did live up on the hill.

Q. Do you know F. A. Kribs? A. No.

(Testimony of William J. Lawrence.)

Q. You were living right at Sweet Home at that time?

A. Yes, sir. Half a mile southeast of Sweet Home. We called it Sweet Home.

Q. You took a timber claim, Mr. Lawrence, up there in June, 1900? Tell the Court the circumstances leading [218] up to making the entry, and subsequent proceedings.

A. Well, all I can tell about it, everybody was taking a timber claim, and I wanted one too, and I went and got it, the same as the rest.

Q. Whom did you go to see about it?

A. John Thompson.

Q. What conversation occurred between you and Mr. Thompson relative to it?

A. Well, I asked him if there was any chance for me to get located on a timber claim, and he told me he didn't know—he would see, and as soon as there was an opening, why, he would give me a show.

Q. Well, what occurred afterwards?

A. Well, afterwards we went up and got located, and went from there to the Land Office.

Q. Did you have any conversation with Mr. Thompson about what there would be in taking the timber claim?

A. Yes; but he didn't know.

Q. What did he say about that?

A. Well, I don't remember now what the exact words were. I don't remember.

Q. Well, what was the substance of it? What understanding did you and he reach before you

(Testimony of William J. Lawrence.)

started to make the filing?

A. Well, I don't know of any understanding, only that he took me up there, and located me, and give me a chance to go.

Q. Well, what did you do?

A. Well, we went to the Land Office. First we went up and got located—he showed me the land, and then we come back to Sweet Home, and stayed all night, and [219] then started for the Land Office.

Q. Who was in the party?

A. Well, there was William and Judd Mealey, Alex Gould, Malone, Richard Watkins, Jacob Gilliland, and I don't remember any of the others. There was a few others, but I don't remember just who they were.

Q. When you got to Roseburg, what did you do?

A. I think we stayed all night. Next morning went in to the Land Office. Then, after we filed on the land, why, I think we crossed the street and signed some mortgages or something, signed something—I don't know what it was—I think that is what it was.

Q. In whose favor? A. I don't know.

Q. Well, when you got the mortgage signed, what transpired?

A. Well, we stayed all night that night, and went home the next day.

Q. What did you receive upon signing your mortgage? A. I didn't receive anything.

Q. You didn't? Well, how long was it before

(Testimony of William J. Lawrence.)

you received some money?

A. How long was it?

Q. Yes.

A. It was after it was sold—after I made final proof.

Q. Well, how long after final proof?

A. I think it was about a week—something like that.

Q. And whom did you sell to?

A. Well, I never knew till just the other day.

Q. Who told you the other day?

A. That gentleman right there beside of you showed [220] me the papers.

Q. Whom did you think you were selling to?

A. Well, I didn't know, nor I wasn't caring who I sold.

Q. Why didn't you care?

A. Why, it didn't make any difference to me.

Q. How much money did you get?

A. I got \$50.

Q. How much money did you understand you were going to get when you made the entry?

A. I didn't know. There never was no understanding.

Q. What was the report going about the community there?

A. Well, everybody was talking like they was going to get \$50.

Q. Whom were they going to get it from?

A. I don't know.

Q. What? A. I don't know.

(Testimony of William J. Lawrence.)

Q. Who was conducting the business of leading men up to receive \$50?

A. I never asked them.

Q. Why did you go to Judd Mealey, or the Mealey boys and Thompson? A. Why didn't I?

Q. Why did you go to them?

A. I never went to the Mealey boys. I went to Thompson.

Q. Went to Thompson?

A. I went to him to get located.

Q. You understood that Thompson and the Mealey boys were the people who were making it possible to get this \$50? A. Of course.

Q. Yes. And they were the people you looked to for the [221] money?

A. Well, I know I got it through them, by going at it that way, of course.

Q. Yes. You understood that before you made the filing? A. Yes, sir.

Q. Who paid your expenses to Roseburg when you first went? A. Why, the Mealey boys.

Q. And when you went the second time?

A. The Mealey boys.

Q. Were you out a single cent of money on the claim in any way? A. I was out no money; no.

Q. Did you understand, when you entered upon the transaction, that you would not be out any money?

A. Well, that was the talk. I didn't understand it. That is what the rest of them all said.

Q. Well, if you had thought you were going to be out any money, would you have undertaken it at all?

(Testimony of William J. Lawrence.)

A. I don't think I would.

Q. What were you doing at that time?

A. Ranching.

Q. Did you own a ranch?

A. No, sir, I didn't own anything.

Q. Didn't own anything. Which of the Mealey boys was it paid you that money?

A. I don't remember which one it was, but I think it was William. I don't know.

Q. Did you sign any note there at Roseburg when you made that mortgage?

A. Not that I know of.

Q. Did Kribs or anybody else ever get a note from you for \$700? [222]

A. Well, not that I knowed of, till the other day here I seen that there was a mortgage against me for \$700.

Q. Did you know that you gave a mortgage for \$700 till the other day when you were told?

A. Not at the time, no. I didn't know it till just the other day.

Q. Where did you go when you made proof there?

A. Went right across the street from the Land Office.

Q. From the Land Office? A. Yes.

Q. In whose office, do you recall?

A. I don't recall.

Q. Who was in there, do you know?

A. There was nobody there only the crowd that was with me.

Q. Were they all there?

A. We all went in together.

(Testimony of William J. Lawrence.)

Q. Were you married at the time?

A. Yes, sir.

Q. Where was your wife?

A. At home, at Sweet Home.

Q. Did you receive any money there at that time of any kind? A. No, sir.

Q. Do you remember the amount that the mortgage was given for, that you signed?

A. Yes, I do now, since I seen it—\$700, I think it is.

Q. Well, had you borrowed any \$700 from anybody? A. Had I?

Q. Yes, at that time.

A. Not that I know of.

Q. Did you know the purpose of the mortgage that you were giving?

A. I didn't know I was giving one.

Q. You didn't?

A. I never knew anything about that mortgage till I seen [223] it the other day here.

Q. What did you think you were doing over there in that office? What is your recollection that you were there for, leaving out the fact you have seen this mortgage?

A. Just following the bunch, doing as they done.

Q. Who was directing the bunch?

A. William Mealey.

Q. Why were you following them?

A. Well, that is where we was directed to go. I was just following the crowd.

Q. I call your attention to an original instrument, which appears to be a mortgage from you to F. A.

(Testimony of William J. Lawrence.)

Kribs for \$700, covering the land embraced in your entry, purporting to have been made the 9th day of October, 1900; also original note described in the mortgage; and ask you if that is your signature upon the mortgage. A. Yes, that is mine.

Q. How about your signature upon the original note? A. I don't remember that.

Q. Isn't that your signature?

A. Of course that is mine.

Q. Yes, you signed that name there.

A. I don't know whether I wrote that name or not. It is just like I would write it, if I wrote it. I surely did.

Q. Well, didn't you deliver that mortgage and that note to William J. Burns a few years ago? Do you remember anything about that?

A. I don't remember. I don't remember anything about the mortgage at all.

Mr. McCOURT.—I offer it in evidence in connection with the witness' testimony. [224]

Mr. LIND.—No objection.

Marked "Government's Exhibit 24."

Q. How long after you got back was it that you signed the deed?

A. Oh, I don't remember just how many days. I think, though, it was about a week or ten days—something like that.

Q. At your home?

A. At the home I had rented, where I resided.

Q. Who brought the deed there for you to sign?

A. I don't remember.

Q. Do you remember going before a man by the

(Testimony of William J. Lawrence.)

name of Buck, to sign it?

A. Yes, that is where we went to sign it.

Q. Who else was there signing deeds at that time?

A. I don't remember of anybody.

Mr. McCOURT.—I offer the deed in evidence.

Marked "Government's Exhibit 25."

COURT.—What is the date of it?

Mr. McCOURT.—The date of it is October 15th; filed for record the 20th of October, 1900.

COURT.—Is the deed to Kribs?

Mr. McCOURT.—Yes, deed to Kribs.

Q. Do you remember, about November, 1901, appearing at Fred Wodtli's house?

A. No, never appeared at Fred Wodtli's house.

Q. Where did you go?

A. Hans Wodtli's—Fred Wodtli's father's.

Q. Who notified you to go there?

A. Why, Mr. Mickalson came down and told me—the [225] postmaster there at Sweet Home—came by my place on horseback, and told me there was some kind of an official up there, and they wanted us to go up, and I got on my horse and went up with him.

Q. Who was there when you arrived?

A. Oh, I don't remember. There was eight or ten people there. I think Mr. Parker was there, W. Billings, the Mealey boys and John Thompson, Sam Pickens and myself. That is all I remember. I think there was a few more there.

Q. Did you have any conversation with either of the Mr. Mealeys before signing the affidavit or instrument that you did sign? A. No, sir.

(Testimony of William J. Lawrence.)

Q. Who was in the room where you went in to sign it?

A. Well, there was a couple of men and a lady.

Q. Did they ask you questions?

A. Yes, sir.

Q. And you gave your answers?

A. Yes, sir.

Q. Was there any writing done upon the instrument with ink at the time?

A. You mean the statement or affidavit?

Q. Yes. A. Not that I know of.

Q. Did you read it over after it was taken out of the typewriting machine?

A. I believe I did. I don't remember for sure whether I did or not. It seems to me like they showed it to me.

Q. Did you sign it right up? How long did you stay there after it was completed and pulled out of the machine?

A. Oh, I think about half a hour, maybe.

Q. Did you stay in the room there?

A. No. [226]

Q. Did you go right out of the room?

A. Oh, not right away. I was probably in the room five minutes maybe.

Q. Did you know the name of the Government agent that was there? A. No, sir.

Q. Was he an old man? A. Yes, sir.

Q. How about the other man that was there—was he older or younger?

A. Younger, I think. I am not positive. I think one old man and one middle-aged man, I think. It

(Testimony of William J. Lawrence.)

might have been a young man.

Q. And the elderly gentleman, did he write anything in the instrument before you signed it, while you were there? A. Not that I know of.

Q. Would you have noticed it if he had?

A. It looks like I would.

Cross-examination.

(Questions by Mr. LIND.)

Do you remember what occurred at Roseburg the second time you were there, at the time you made the final proof? Do you remember the details of what was done?

A. All I remember is going and making my proof, and going across the street to that other building.

Q. And signing some papers at the other building?

A. I signed some papers in there, yes, but I don't know what they was.

Q. Well, now, did you know at the time?

A. Did I know at the time? [227]

Q. Yes, at the time you signed the paper, did you know what it was you signed? A. No.

Q. What did you think it was?

A. Well, I didn't know. I thought maybe it was something in connection with making the proof. I didn't know.

Q. When did you first find out that you had signed the mortgage?

A. Well, Andy Nichols told me something about it a year ago, and I never knew it for a fact until I seen it the other day.

Q. Well, as a matter of fact, didn't you know at

(Testimony of William J. Lawrence.)

the time that you had signed a mortgage, but after its return, you forgot all about it?

A. Well, I cannot remember anything about it.

Q. Did you know what the Government price of your quarter section was? A. No.

Q. How? A. No, I didn't know.

Q. Didn't you know how much money it would take to prove up on a claim? A. No.

Q. Didn't you hear anybody say? A. No.

Q. Did you inquire of anybody? A. No.

Q. Do you know now?

A. Why, since I have been in court here, I heard them say \$400, but I don't know.

Q. Well, do you know any more about it than you did then? A. Well, no, I don't. [228]

Q. Well, didn't you know just as much about it then as you do now? A. (Witness laughs.)

Q. Now, really, this is a serious matter. Didn't you know that it took about \$400 besides expenses, to prove up on a piece of land at that time, under the Timber and Stone Act? A. Didn't I know it?

Q. Yes.

A. Why, I knew it would cost something but I didn't know what it was.

Q. Well, where did you figure that something was coming from, if not from your mortgage or deed?

A. Well, I supposed it would be furnished.

Q. Furnished by whom?

A. I don't know.

Q. Did't you understand that the Mealey boys were raising the money to make those final proofs for the whole bunch of you?

(Testimony of William J. Lawrence.)

A. Well, I didn't know whether it was their money or not, or whose it was.

Q. No, but you understood that they were raising the money for all of you to make final proof with?

A. Oh, certainly, certainly.

Q. And wasn't that why you gave the mortgage?

A. Well, I suppose there wouldn't have been any other way to have gotten it.

Q. No, I don't either. And you knew that at the time, didn't you?

A. Well, I had ought to know it. [229]

Q. Well, didn't you think that was the way at the time?
A. I don't remember whether I did or not.

Redirect Examination.

Q. You didn't inquire into any of the details surrounding this transaction at all, did you?

A. No, sir.

Q. You understood that the Mealey boys were taking care of all those matters?

A. They did the rest of them, and I thought they would me, and I didn't ask any questions—I just followed the crowd.

Q. Whom do you refer to as the crowd?

A. Why, the rest of the boys—Mr. Billings, Mr. Pickens—

Q. All the fellows from up there in your part of the country?
A. Yes, sir.

Q. That were making proof at that same time?

A. Yes, sir.

Recross-examination.

Q. Now, you have been before Mr. Burns?

(Testimony of William J. Lawrence.)

A. Yes, sir.

Q. The special agent of the Government?

A. Yes.

Q. When the Grand Jury was in session here?

A. I don't know anything about the Grand Jury. I was down here before Burns.

Q. Well, didn't Mr. Burns tell you about the Grand Jury? A. No, sir.

Q. Where did you have your conferences with Mr. Burns?

A. I believe it was in the Portland Hotel.

Q. How?

A. I think it was up in a room in the Portland Hotel. I am not certain.

Q. He had a number of conversations with you, didn't he? [230] A. No, sir, he did not.

Q. How many? A. One.

Q. How long did that last?

A. Well, it lasted till he got tired of cussing.

Q. It lasted till he got tired of cussing?

A. Yes.

Q. What did he cuss for?

A. Because he felt like it, I guess.

Q. Well, did he cuss you? A. Yes, sir.

Q. What did he try to make you do?

A. I don't know as he tried to make me do anything; but because I couldn't answer it, he told me I was a damn liar.

Q. Did you lie to him?

A. Not that I know of. I don't think so.

Q. How long did he keep you here?

A. I think I was in there about fifteen minutes—

(Testimony of William J. Lawrence.)

something like that.

Q. But how long were you kept in the city?

A. I don't remember.

Q. Well, you have an idea—several days or weeks?

A. I don't think it was any longer than a week.

Q. Kept by the United States Deputy Marshal, were you not?

A. Yes, sir. I was subpoenaed down here on a subpoena, I think it was.

Q. Don't you remember that the Grand Jury was in session at that time, grinding out indictments for alleged land frauds?

A. Yes, I do, yes.

Q. Well, now, you were considerably frightened then, were you not, by Mr. Burns and others? [231]

A. Yes, sir.

Q. Don't you think you would be a little more frank to-day? A. What is it?

Q. Don't you think you would be a little more open to-day, a little more frank if you had not had to undergo that ordeal before?

A. Why, I suppose I would.

Redirect Examination.

Q. You haven't told anything that wasn't the truth, have you, as you did understand it?

A. You say I haven't told anything?

Q. Yes. I say you haven't told any untruths to-day, have you?

A. Well, I may, but I don't know if I have.

Q. You are trying to tell the truth?

A. Yes, sir.

Q. Nobody has been frightening you around here,

(Testimony of William J. Lawrence.)

since you have been here this week, has there?

A. No. I ain't been scared a bit.

Q. Where did you go when you first landed in Portland here when you came down to see Mr. Burns, or came down to the Grand Jury? Whose house did you go to?

A. Well, I don't know. I had never been in Portland before, and I just went any old place.

Q. Who looked after you?

A. Nobody that I know of.

Q. Didn't the Mealey boys come along with you people at that time?

A. I believe they were here all right.

Q. And didn't they ask you to go and see Fred Kribs?

A. Not that I remember of.

Q. What?

A. Not that I remember of.

[232]

Q. Well, who was it told you to go up to Kribs' house?

Mr. LIND.—Now, counsel knows just as well as I do, that that is an improper question. I dislike very much to object to the District Attorney's course of procedure, but I must.

Mr. McCOURT.—Well, I might have objected to your questions. They were not entirely proper in this connection, I think. I want to show that if there was any coercion, anywhere, or persuasion, that it was being used on the other side just the same.

COURT.—I do not think it a material inquiry in this case. He has testified in this case as he understands it now. There is no evidence here of what he told Burns or anything of that kind.

(Testimony of William J. Lawrence.)

Q. Notwithstanding Mr. Burns was harsh with you, you didn't tell him anything different from what you have told here to-day?

A. Not that I know of.

Witness excused. [233]

[Testimony of Cornelius Tuthill, for the Government.]

CORNELIUS TUTHILL, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Tuthill?

A. Live at Salem.

Q. Did you ever live up in Linn County?

A. Yes; I lived there 25 years.

Q. How long? A. Since 1883.

Q. Were you living up there in 1900?

A. Yes. No, I was in Seattle in 1900.

Q. You were in Seattle in 1900? A. Yes.

Q. Were you up there in the Sweet Home country along in May and June of 1900?

A. I ain't been to Sweet Home for, I guess, about 8 years, I guess. I sold out.

Q. Did you take a timber claim up there in that country in 1900?

A. Well, somewheres about that time; about 10 years ago, pretty near.

Q. Tell the Court now how it was you came to take that timber claim. A. What say?

(Testimony of Cornelius Tuthill.)

Q. Tell us how you came to take that timber claim.

A. Well, as far as I know, I was interested in the matter when Judd Mealey come to me, wanted to know if I would take a claim. I supposed it was all right, and I said yes. He offered to furnish me the money for a certain length of time, and he said they would pay all expenses [234] to advertise it, and to prove up; that is, to pay my expenses to Roseburg and back. But I didn't understand it exactly, and I remember about going from Lebanon—I mean from Albany, to Roseburg, to file on it, and then that—I guess it was 60 days, wasn't it, after that, you prove up; then I went up the second time with them from Sweet Home. There were two loads of men. I don't know who they was—I forget now—but I got a statement here that I gave Mr. Heney quite awhile ago, and it speaks all about it. Well, then, when I went to Roseburg, I stood on the floor, I supposed, all right as a witness, that I should have it for my own benefit, and I supposed it was all right. And after we got through, they took me into a room by myself. And I didn't know—I wanted to look at the papers—I think I signed two papers, and I didn't see them at all. They wouldn't let me look at them at all. I signed the papers and went out.

Q. Did they give you anything when you got in that room? A. Beg pardon?

Q. Did you get any money?

A. No, I didn't. Yes, I didn't have the money myself, only what the boys gave me.

Q. What did they give you?

(Testimony of Cornelius Tuthill.)

A. All I got was \$50 out of it, but I didn't understand the \$50 at all. I supposed I was to get a deed for the land, and I would give them a mortgage. That is what I supposed I was to get, but I didn't get either. And all they give me was \$50. I swore on the floor it was for my own benefit, that I was to have the use of that land till I could sell it any time, and pay the mortgage off. That is what I understand. [235]

Q. And they took it right away from you?

A. Yes. I signed the papers, and I tell you I didn't know the man at all, I guess; he is a great big-headed fellow, and kind of short, thick—thick-set.

Q. Have you ever seen him since?

A. No, never seen him since.

Q. What?

A. I have never seen him since. And I never saw the papers; never saw the deed, nor nothing else.

Q. Did he have some whiskers down here just a little ways? A. I think so, yes.

Q. Have a moustache?

A. Yes, I think he did. Well, he had a great big head on him,—bigger than three of mine, I guess.

Q. Had you been living up there at Sweet Home at that time?

A. Yes, sir. Yes, I was up at Sweet Home. I ought to have seen the papers before I signed them. That is where I fooled myself, I suppose. That was when I proved up, and give it all away.

Q. Who paid all your expenses and all the money that it took? A. They paid the expenses.

Q. Who were "they"?

(Testimony of Cornelius Tuthill.)

A. Well, Judd Mealey, I suppose, and Bill Mealey, both of them.

Q. Did you ever go to see any of the land?

A. Yes. They took me on the land. It was up near Bull Mountain, I think, above Sweet Home. I see the land.

Q. Now, how long was that after you had proven up that you went into this room there—this little room?

A. After I had—before I took the land?

Q. No, after you had made your proof there, when you swore [236] before the officer, how long was it before you went out and signed that deed and mortgage, or those two papers?

A. Well, it might have been 60 days, the time allotted, you know, you have to advertise.

Q. You don't understand me.

A. *It first for 30 days, don't you?*

Q. Yes. You don't understand me. I say, how long was it after you were in the Land Office down there, the last time you were there, before you went out and signed these two papers?

A. Oh, it wasn't long—just long enough to stand up in a row, and tell them it was for our own benefit. We had to swear that in first, and then they took each one apart.

Q. Now, how long after that was it you went out in the little room?

A. Oh, a little while; just maybe 20 minutes; it might be 20—a short time.

Q. Was either of the Mealey boys in this room?

A. One of them I saw. I believe Judd took me

(Testimony of Cornelius Tuthill.)

in where that man was—Judd Mealey.

Q. You are sure you signed two papers there that time?

A. I think there is two, if not three; but I know I signed my name two or three times—three times. They said it was all right, that they could catch the train and get out—“We have got to get back as quick as we can,”—and, of course, he says, “It is all right. You needn’t be afraid at all. The paper is all right.” But I never saw them only what I signed—never saw the paper afterward.

Q. Well, now, do you remember about a year later after you [237] signed that paper, having to sign some other paper about it up there at Wodtli’s house?

A. Where is that?

Q. Up at Wodtli’s house.

A. I guess so. No, I don’t think I signed any only at Roseburg.

Q. Well, do you remember the crowd going up to Wodtli’s—up to Hans Wodtli’s?

A. Oh, yes, I remember that. Yes, I remember that.

Q. Let us hear about that now.

A. I am glad you spoke about that.

Q. Yes. Well, how did that happen?

A. Well, they brought us down there, and they had a big sheet of paper before them, and us boys looked at it, and they wanted us to tell what to say, and, of course—

Q. Well, what did they tell you to say?

A. Well, we went over to this here Wodtli’s, and there was a couple of lawyers, I suppose there was,

(Testimony of Cornelius Tuthill.)

from Washington, and one of them personally spoke pretty lively; and I believe—yes, Judd sat right by me, and says, “If you don’t think of all of it, just let me know, and I will tell you.” That is the way it was, and they signed the paper.

Q. Did you answer any of the questions yourself?

A. Yes, I answered all I could—about all I could remember. I forget the questions now. It has been so long ago. [238]

Q. How long did you stay there at Wodtli’s?

A. Well, I believe we went down in the afternoon. We talked the matter over, and I think it was in the morning—think we took one meal; it might have been in the afternoon. Might have been supper; had a pretty good meal; they paid for our supper, 25 cents. Give me \$5.00 and I guess give the rest \$5.00 apiece. I saw a few get the \$5.00.

Q. Which ones did you see get any \$5.00?

A. Well, I think it was Sam Pickens, and one of the Wiley boys. I seen three or four. I didn’t notice any particular ones; we was all going to get \$5.00. Got a pretty good dinner first, or supper, anyhow.

Q. And gave you \$5.00 besides, and answered the questions for you? A. Yes.

Mr. LIND.—I couldn’t hear the witness very distinctly, but I heard nothing indicating such an answer as you suggested.

Mr. McCOURT.—He answered that a few minutes ago.

Mr. LIND.—What did he say?

Mr. McCOURT.—He said Judd Mealey sat beside

(Testimony of Cornelius Tuthill.)

him, and said when you don't understand, I will answer for you, something of that kind.

Q. Now, before—did I understand you that Mealey, Judd Mealey, come to see you about the claim, or you went to him?

A. He come to me, and offered to loan me the money.

Q. Did he make—what statement did he make, if any, regarding the sale of the land?

A. No, I never offered—made any bargain at all. I supposed I was to get the claim myself.

Q. You did?

A. Yes, I supposed it was mine. [239]

Q. Do you remember—do you remember being down here in 1904? A. Beg pardon?

Q. Do you remember being down here in 1904, at the Grand Jury?

A. I think it was at the time. It has been quite a while.

Q. Or 1905. And do you remember making a statement before Mr. Burns?

A. Yes, I remember a statement I made here. I made a statement at Portland here.

Q. How?

A. I made a statement here at Portland before Burns, the first time I come down here.

Q. You saw Mr. Burns? How many times were you down?

A. Well, this makes the third time I have been down here. I made a statement here for—

Q. Well, now, I will ask you if that is your signature, Mr. Tuthill?

(Testimony of Cornelius Tuthill.)

A. Yes, that is my signature.

Q. I will ask you if you remember telling Mr. Burns this? A. Yes.

Q. "I reside about ten miles southwest of Albany in Linn County, Oregon." I will state the date of this affidavit is the 10th of January, 1905. And you further said, "In the early part of 1900, I was approached by W. J. Mealey who wanted me to take a timber claim"? A. Yes.

Q. "And said he would pay all expenses and furnish the money, and give me \$50.00."

A. Yes.

Q. Do you remember telling Mr. Burns that?

A. I remember that, but I didn't understand the \$50.00 I [240] spoke about.

Q. What?

A. I remember stating \$50.00, but I didn't understand what it meant. I supposed I was going to get the claim anyhow; I supposed I was—pay \$50.00 for the mortgage.

Q. You thought you would get the claim and \$50.00?

A. Yes, I was to pay him—I didn't understand it. Supposed I was to get it for the claim, and give my mortgage—that I would pay—that is I understood—

Q. Oh, you did understand that he said you were going to get \$50.00? A. Certainly.

Q. Oh, he did say, then? A. Yes, sir.

Cross-examination.

(Questions by Mr. LIND.)

Mr. Tuthill, did you say that Judd Mealey an-

(Testimony of Cornelius Tuthill.)

swered some questions for you at Wodtli's?

A. Beg pardon?

Q. Did you say that Mr. Mealey answered some questions for you at Wodtli's?

A. No, no, I don't think he asked any questions.

Q. How? A. I don't understand you.

Q. Didn't you say to the District Attorney that Judd Mealey answered some questions for you at Wodtli's house?

A. No, I don't think he did. No, I don't remember his asking any questions.

Q. It would take him a good while to answer questions for anybody—wouldn't it?

A. I don't remember it.

Q. Did anybody answer any questions for you when you were talking, and when that young woman was writing? A. Ask any questions? [241]

Q. Did anybody answer any questions for you?

A. Oh, I don't remember. I remember the questions, but I don't remember what now. I don't understand you exactly. I am a little hard—better come closer so I don't make no mistake. I want to be understood. I want to be understood—so I can hear you.

Q. Yes. You remember going to Wodtli's house?

A. Yes, sir.

Q. What did you do there? A. Wodtli's?

Q. At Wodtli's.

A. Well, we went before these two men; there was one man questioned us, and another lady at a typewriter and put it all down.

Q. Just like the stenographer sitting here?

(Testimony of Cornelius Tuthill.)

A. Yes, she—

Q. Who answered the questions?

A. Well, I don't know; I don't know his name. There was two men, but I don't know the man's name.

Q. Well, he asked you the questions, didn't he?

A. Yes.

Q. Did you answer them? A. Yes.

Q. Did anybody else answer for you?

A. No, only once or twice; Mealey told me what to say once in a while, if I might forget, he would tell me what to say.

Q. But he told you right, didn't he?

A. No, no—well, pretty near. I could not tell about it.

Q. Do you remember anything that he told you about?

A. No, I don't remember it now.

Q. He told you the description of the land, probably?

A. Oh, told the description of the land, when I went to look at it, at Bull Mountain. That is all I know. He took [242] me up to the claim, and told me about it—all I know about it.

Q. What did you go up to that claim for?

A. To locate—he said he would locate me, and wanted me to go look at it.

Q. What did you want to locate it for?

A. What?

Q. What did you want to locate it for?

A. I could not locate myself. I wanted, if I could make anything to help, for my own benefit. If I

(Testimony of Cornelius Tuthill.)

could make a thousand or fifteen hundred, might as well have it as not. There was to be a mortgage. I supposed I was—

Q. He told you about a mortgage, or deed, did he?

A. I was to give him a mortgage, I understood.

Q. For the money that it would take. You knew it would take money to pay Uncle Sam?

A. Of course, \$450.00. I supposed I was going to get the money and take up the land, and give him a mortgage. I would get a deed.

Q. You would get a patent?

A. A patent. I was to have it, I supposed, six years. I understood six years I was to have the land. I was to pay that mortgage off in that time, even before six years if I wanted. That is what I understood.

Q. When did you find out differently?

A. I found out differently after I filed—on these papers, and found of the others what I had done. That is all. Got it from others—I never saw the papers.

Q. Didn't you sign—you signed a deed for this land?

A. I signed two papers, I supposed at the time I proved up. I thought—the papers I never saw.

Q. How old a man are you? [243]

A. In my 68th year.

Q. Are you hard of hearing?

A. A little in one ear; yes, sir.

Q. Forgetful? A. Beg pardon?

Q. Have you become forgetful?

A. Yes, sir, forgetful, some things, yes.

(Testimony of Cornelius Tuthill.)

Q. Pretty hard for you to remember business transactions, eight or ten years ago?

A. Yes, it is. I am in my 68th year now.

Q. 68th. It is pretty hard to remember—

A. Yes, it is.

Q. —what Burns and Heney told you?

A. Yes, it is now, so long a time.

Q. You were pretty badly frightened, were you not?

A. I tell you all I can and be honest as far as I can. That is all I know about it.

Q. Do you remember whether the Mealey's told you how much money it would take to prove up and pay the expenses?

A. Why, it was his house, I believe.

Q. How?

A. It was his house. He told me up where he lived.

Q. But how much—did he tell you how much it would take?

A. Well, I know—he didn't exactly tell. Said it would take \$450.00—\$2.50 an acre to prove up on it, and then he would pay the expenses back and forth to Roseburg.

Q. How much did he figure his expenses would be?

A. Well, it would have been \$25.00 he paid out besides the \$50.00.

Q. \$125.00?

A. Well, I got \$50.00; I suppose his expenses for me was \$25.00.

Q. But did he say anything about the expenses

(Testimony of Cornelius Tuthill.)

for [244] locating you?

A. No, no, not exactly. I don't remember. No, didn't say nothing about expenses at all. Not to me, he didn't.

Q. How?

A. He didn't say anything to me about paying expenses.

Q. Do you remember now whether he told you how much money he would lend you or get for you?

A. Well, there was not—to take up the land. \$2.50 an acre, isn't it?

Q. How? A. \$2.50 an acre, isn't it?

Redirect Examination.

Q. Before you talked to Mr. Burns had you received any communication from Mr. Mealey?

A. Well, I did. I was out on the place. I did. The other side of Jefferson. He sent me a letter.

Q. Do you know his handwriting? Know it was from him? A. Yes, I knew his handwriting.

Q. I hand you a letter and ask you if that is the letter you mean?

A. Yes, that is his writing, yes.

Mr. McCOURT.—I offer the letter.

Mr. LIND.—This is objected to as immaterial and irrelevant, and certainly incompetent at this time or in this connection.

Mr. McCOURT.—I offer the letter for the purpose of showing the effort made by the defendants, especially the defendants Mealey, to influence, or rather to frighten the witness out of telling the truth.

Mr. LIND.—What is the date of the letter?

Mr. McCOURT.—The date of the letter is Decem-

(Testimony of Cornelius Tuthill.)

ber 20, 1904. [245]

Mr. LIND.—That, your Honor, is long after the patents were issued and evidently written at the time there were some proceedings here in Portland. Now, it is purely immaterial and irrelevant. You can't impeach this witness or clarify any of his testimony by it. If you choose to use other witnesses—if the Mealeys were on the stand and testified inconsistent with that, it would be proper on cross-examination. At this time it is surely irrelevant.

Mr. McCOURT.—I withdraw the letter and have it marked for identification.

Marked "Government's Exhibit 26 for Identification."

Q. I offer a copy of the deed dated the 9th day of October, 1900, covering the land embraced in his entry. Deed from Cornelius M. Tuthill to F. A. Kribs.

Marked "Government's Exhibit 27."

COURT.—No mortgage with this?

Mr. McCOURT.—Apparently not. There was none of record so I don't know whether there was one or not.

Q. Were you a married man at that time?

A. Married—no.

Q. What other property did you own at the time you made the filing?

Objected to as immaterial.

Mr. McCOURT.—I ask the privilege of asking it as redirect.

COURT.—What is the purpose? To show he had no money?

(Testimony of J. A. Steingrandt.)

Mr. McCOURT.—I don't know but what he has said so already.

Witness excused. [246]

**[Testimony of J. A. Steingrandt, for the
Government.]**

J. A. STEINGRANDT, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Steingrandt?

A. Eight miles east of Foster.

Q. Do you know William R. and Judd Mealey?

A. Yes, sir.

Q. How long have you known them?

A. For the last 25 years.

Q. And Mr. John A. Thompson?

A. Yes, sir.

Q. Do you know Frederick A. Kribs?

A. No, sir.

Q. Never met Mr. Kribs?

A. No, sir. If I have I never knew him.

Q. You took a timber claim up there in Linn County, and one of the claims involved in this litigation. Will you kindly state to the Court the circumstances leading up to the taking of it, the conversations you had regarding it and follow it right along in successive steps.

A. Why, I don't know as I can remember all of it.

Q. No, we don't expect you to.

A. Why, I took up a timber claim there, I can't

(Testimony of J. A. Steingrandt.)

remember just the time that it was, and I had heard of other people taking up timber claims. I come to the conclusion that I would take up one myself. I went to the Mealey brothers and spoke to them about it, to see if they could locate me, and they said they would see later on, the timber was pretty well taken up at that time. I think it must have been about a week, I guess, before I heard from them. [247] They told me they had found a claim that I could take up, and I think it must have been about five or six days, I guess maybe longer, afterwards, when we went up to see the claim. They took me over the land and showed me the corners, showed me the timber, and I should judge it was about ten days before we went down—before I went down to file on it.

Q. Who was in the party when you went up to look at the timber? A. How is that?

Q. Who was there in the party when you went up to look at the timber?

A. Why, the two Mealey brothers, and Samuel E. Pickens, George Pickens, Thom Parker, Joe Mickalson, Charles Wiley and Oliver Erickson, Frank Steingrandt, as near as I can remember.

Q. How far was that from where you lived at that time to the timber?

A. I judge about seven miles.

Q. How long had the Mealey boys been engaged in filing persons on timber claims at the time you applied to be located?

A. Oh, I could not tell you just how long. It was quite a while.

(Testimony of J. A. Steingrandt.)

Q. What do you mean by "quite a while"? How many months?

A. Oh, five or six months, maybe, might have been a year.

Q. How did you get up to this timber claim, walk or ride? A. Yes, I walked up.

Q. All of the party walk up?

A. Yes, sir. [248]

Q. And how far was it from Mealey's house?

A. About seven miles, I think.

Q. Well, now, when you went to Roseburg, did the entire party go to Roseburg? A. Yes, sir.

Q. When you got down—who paid your expenses to Roseburg the first time?

A. I don't know who paid my expenses.

Q. Did you pay it? A. No, sir.

Q. Do you know who paid for advertising the notice of your final proof? A. No, sir.

Q. Well, what did you do next about that claim, after you returned from Roseburg? Who called your attention to it again? A. Me taking it?

Q. No, who called your attention to making proof? Who told you it was time to go and make proof?

A. Why, it was advertised in the Brownsville paper.

Q. Did you take the paper at that time?

A. Well, I did at the time, yes.

Q. Well, did you go down alone when you went down to prove up? A. No, sir.

Q. Who went along?

A. Why, I could not just remember who all.

(Testimony of J. A. Steingrandt.)

Q. All those same people?

A. I think all the same people that was with me up there, I think was along.

Q. How did you go from the Foster country there down to the railroad? [249]

A. Why, we came down—I forget now whether the Mealey brothers drove their own team or a special team hired from Sweet Home. I don't remember. Come down to Sweet Home.

Q. Did you go around and engage passage with them or did they come and tell you when to be ready to go?

A. Why, the date was in the paper, when it was time to prove up and that date stated that, when to start, so we would get there on time.

Q. How did you find out the Mealey's rig was going? A. How? What? How is that?

Q. When did you find out the Mealey's rig was going and that you were to go in it?

A. They sent word to me and told me they were ready.

Q. And where did you take the train?

A. Lebanon.

Q. Well, when you got down to Roseburg, what occurred?

A. Why, we went to breakfast when we got down. We got in at twenty minutes to five.

Q. In the morning? A. In the morning.

Q. What occurred later in the day, in relation to this claim?

A. I think we went to the Land Office.

Q. Who went to the Land Office?

(Testimony of J. A. Steingrandt.)

A. All of us that was connected in the gang.

Q. Was either of the Mealey boys along?

A. Yes, sir.

Q. How many of them?

A. I think there was one of them, or both of them.

I don't remember which.

Q. Was John A. Thompson there? [250]

A. No, I don't think he was.

Q. You don't think he was there. Did they go up to the land office with you? A. Yes.

Q. Well, what occurred when you got into the land office?

A. Why, we made final proof, there, before the land agent.

Q. Well, did you have any conversation with the Mealey boys prior to going in there to make proof?

A. No, sir.

Q. As to what you should swear to?

A. No, sir.

Q. You didn't. Or at any other time?

A. No, sir.

Q. Well, when you had made your final proof, what did you do?

A. Why, I think I went to the hotel, as near as I can remember.

Q. What occurred there?

A. I think it was a hotel where we went. I would not say for sure.

Q. Well, what occurred there, wherever it was you went to?

A. Why, we signed—I signed the mortgage for the security of the land.

(Testimony of J. A. Steingrandt.)

Q. How much of a mortgage did you sign?

A. I could not tell you that. I don't know.

Q. How much money did you get?

A. I didn't get any.

Q. And was your wife up there?

A. How is that?

Q. Was your wife up there? A. No, sir.

Q. Were you married then? A. Yes, sir.

Q. Who was present when you signed the mortgage?

A. Why, I think there was two persons there present. [251]

Q. Who were they?

A. I think one of the Mealey brothers was one and another man there. I don't remember who he was.

Q. Do you know a man by the name of John Shupe? A. No, sir.

Q. Don't know Mr. Shupe? Do you know who you made the mortgage to? A. No, sir.

Q. How long after you made the mortgage was it before you made the deed?

A. Why, I didn't see the deed for about a couple of weeks, I guess, or more.

Q. Who brought it to you?

A. A man by the name of Buck, and William R. Mealey.

Q. Did you go right home from—

A. Yes, sir.

Q. All the party go right home?

A. Yes, sir.

Q. Well, when you got—when you made the deed,

(Testimony of J. A. Steingrandt.)

what occurred?

A. Why, nothing that I know of.

Q. Well, did you get any money?

A. Yes, sir.

Q. How much?

A. We got \$50.00 at present. I got \$75.00 afterwards.

Q. When did you get the \$75.00?

A. About three or four months after, I think. I got about \$125.00 altogether.

Q. How was that \$75.00 paid?

A. How is that?

Q. How was that \$75.00 paid to you?

A. In gold.

Q. Who paid it to you? A. Mr. Mealey.

Q. And where did he pay it to you?

A. At home. [252]

Q. How did he pay you the \$50.00—what kind of money? A. In gold coin.

Q. Who was present? A. Mr. Buck.

Q. Who was present when he paid you the \$75.00?

A. Nobody.

Q. Which Mealey paid it to you?

A. Mr. William Mealey.

Q. Where, whose house? A. Mine.

Q. Was your wife present? A. Yes, sir.

Q. Do you remember the day of the week that was? A. No, sir, I don't.

Q. Do you remember being down here in 1905?

A. Well, I was down here once. I don't remember what time it was.

Q. Yes. Did you tell anybody at that time that

(Testimony of J. A. Steingrandt.)

you received any \$75.00 after you got the \$50.00?

A. No, sir.

Q. Didn't you tell them that you only got \$50.00?

A. Yes, sir.

Q. Didn't you talk to Mr. Rabb here last Fall—last March—about a month ago, about this same thing?

A. Who?

Q. About a year ago?

A. No, sir, I don't know.

Q. Out there by Foster, this gentleman here?

A. I don't remember of ever meeting the gentleman.

Q. Talking to him out on the road there, near your place?

A. No, sir, I don't. If I ever saw him I don't remember him.

Q. Don't you remember talking to a Government agent about [253] a year ago, about this case?

A. No, sir, I don't remember him.

Q. You don't. You were driving in a buggy, or wagon, and you had somebody driving with you—Mr. Rabb had a driver?

A. No, sir, I don't remember.

Q. You don't? A. No, sir.

Q. In which you stated to him that you made your filing with the understanding that you would receive \$50.00 for your right and that you had no other understanding or agreement, and that \$50.00 was what you were paid?

A. If I did I don't remember it.

Q. You don't? A. No, sir, I do not.

Q. Well, how does it come, now, that you didn't

(Testimony of J. A. Steingrandt.)

say anything about the \$75.00 to Mr. Burns and you didn't say anything about the \$75.00 to Mr. Rabb?

A. Why, I didn't think that was any—

Mr. UELAND.—We object to that question.

Mr. McCOURT.—Wait until I finish that question.

Q. And for the first time you now talk about \$75.00 that you received after the \$50.00.

Mr. UELAND.—We object to that question because it assumes facts that do not appear in evidence. There is no disclosure in the evidence that this is the first time that he has stated so and so. The question assumes a state of facts that is not present.

COURT.—He just answered he never said it at any other time, if I understand his testimony. He said he never made that statement before. [254]

Mr. UELAND.—I didn't so understand.

Mr. McCOURT.—Read that question to the witness.

(Question read as follows: Well, how does it come, now, that you didn't say anything about the \$75.00 to Mr. Burns and you didn't say anything about the \$75.00 to Mr. Rabb, and for the first time you now talk about \$75.00 that you received after the \$50.00?)

A. I didn't think it any importance to anybody else about what I got.

Q. You didn't? A. No, sir.

Q. You were asked particularly about that very thing, weren't you? A. Yes.

Q. You remember talking to that man (indicating Mr. Good), just two or three days ago, about that same matter? A. Yes, sir.

(Testimony of J. A. Steingrandt.)

Q. And he asked you about that matter of the payment? A. Yes, sir.

Q. And you never said a thing to him about any \$75.00?

A. (Addressing Mr. Good.) You asked me if I got \$50.00, didn't you, or something that way, how much money I got. What was it I told you?

Mr. GOOD.—Fifty dollars, if I remember.

A. Well, I didn't think it was any use for me to tell him how much more I got afterward. I don't know what I got it for.

Q. Now, when you went to talk about this claim to Mr. Mealey how much did he tell you?

A. That I was to get?

Q. Yes. A. Fifty dollars. [255]

Mr. UELAND.—Just wait a minute. I want the counsel to fix that time.

Q. That was before you filed on the claim at all?

A. How is that?

Q. That was before you filed on the claim at all?

A. No, sir.

Q. When was that? A. Afterwards.

Q. Do you remember in this statement that you made before Mr. Burns, on January 13, 1905, you and Louis Maynard and Joseph W. Rozell being present, making a joint statement that you "heard that the Mealey boys were locating men on timber claims and paying \$50.00 apiece. We called on the Mealey's and asked if we could get in on the deal. They informed us we could. We made our filings at Roseburg office and when time came to make final proof we again went to Roseburg and proved up, but

(Testimony of J. A. Steingrandt.)

didn't pay any of the final proof money, being told by the Mealey's that it was all attended to. After making final proof we, Louis Maynard and J. H. Steingrandt"—well, that is Steingrandt—oh, you are Steingrandt—"mortgaged the land to Fred A. Kribs or through his agents, so far as we recollect. A short time afterward we signed deeds transferring the land to Kribs or his agent, and after signing these deeds were paid \$50.00 each for our part in the transaction."

A. Well, he never asked me such questions.

Q. Didn't you tell Mr. Burns— A. No, sir.

Q. —in the presence of these gentlemen that Mr. Mealey—or that you took the claim with the understanding that Mr. Mealey was to get the claim and you was to get \$50.00? A. No, sir. [256]

Q. You didn't? A. No, sir.

Q. Do you remember about a year after you had deeded this land being at Wodtli's house there?

A. Yes, sir.

Q. Who requested you to appear there?

A. I was notified by Mr. Thompson to go down. Said they wanted to see me. A man wanted to see me. I didn't know what he wanted to see me for.

Q. What happened when you got there?

A. He had some *papers wanted* me to sign.

Q. Were they already made out?

A. Well, no, they were typewritten while I was there.

Q. Who was in the place when you got inside?

A. Why, there was two men there and a lady running the type.

(Testimony of J. A. Steingrandt.)

Q. How long had you been outside there before you went in?

A. I went right straight from Foster down there. Didn't have only just a minute or two to stop there, because the stage was pretty near there and he had to take the stage to get out.

Q. Did you have a talk with William Mealey before you went in to answer those questions?

A. No, sir.

Q. You didn't? Did you know at that time to whom you had deeded your land?

A. No, sir, I didn't.

Q. Nor to whom you had mortgaged it?

A. No, sir, I didn't.

Q. Did you know how much you had mortgaged it for? A. No, sir, I didn't. [257]

Q. Did you know how much you had sold it for?

A. No, sir.

Q. Did you get your \$75.00 after you made your affidavit down there?

A. I could not remember if I did or not.

Q. Wasn't that \$75.00 you were talking about the consideration you got for taking a homestead?

A. For taking a homestead?

Q. Yes. Which was also deeded to the Mealey brothers?

A. It might have been, but I don't remember.

Q. You did take a homestead?

A. Yes, sir, I did.

Q. And you did deed it to them?

A. No, sir, I didn't.

Q. Or to somebody in their interest?

(Testimony of J. A. Steingrandt.)

A. I sold them part of it. Yes, sir, I sold them part of it.

Q. What did you get for that?

A. \$3.50 per acre.

Q. And how many acres did you sell them?

A. Eighty acres.

Q. Did you get it all at once? A. Yes, sir.

Q. Well, then, the \$75.00 you were talking about could not be part of that, could it?

A. I sold them, I think, forty acres or more afterward, all but my improvements, and I don't remember that I got all of this or not. I don't think I did.

Q. What is your best recollection, now, about this \$75.00 business, whether or not it was a part of your homestead purchase price, instead of this?

A. It might have been, but I don't remember. Might have been, but I don't remember. [258]

Q. Well, when you got down there to Wodtli's, do you remember being asked this question: "How much, if anything, did you pay him for his service in locating you?" Wait, I will ask you the question immediately before that.

"Q. Who, if anyone, located you on this land or showed it to you? A. Mr. William Mealey. Q. How much, if anything, did you pay him for his service? A. \$50.00."

A. I don't remember what his location fee was.

Q. Did you pay him any location fee?

A. Yes, sir.

Q. You did? How did you pay it?

A. I don't just remember now.

Q. Did you remember then?

(Testimony of J. A. Steingrandt.)

A. Yes, I think I did. I don't remember now what it was.

Q. Did you ever tell anybody before that there was a location fee, except this man at Wodtli's house? A. No, sir, I don't think I did.

Q. How were you going to pay a location fee of \$50.00 if you were only going to get \$50.00 for your claim?

A. Well, I don't remember now how that was. There might have been such a thing somebody else pay the location fee, but I don't remember it.

Q. \$50.00 was all you was going to get?

A. Yes, sir.

Q. And you were not to be out a cent of money, of any kind, were you? A. No.

Q. Do you remember this question being asked you and answering it: "What did position have you made of the land since you obtained your final certificate? A. Sold it to F. A. Kribs for \$840.00."

A. I don't remember it. [259]

Q. What is that?

A. I don't remember it.

Q. Did you answer any question that way at that time? A. I don't remember. I—

Q. What?

A. I don't remember if I did. I never received any \$440.00.

Q. \$840.00? A. \$840.00.

Q. "Do you know Mr. Kribs personally? A. I got acquainted with him while I was in Roseburg, at the time I filed on the timber claim."

A. I never knowed Mr. Kribs in my life.

(Testimony of J. A. Steingrandt.)

Q. You didn't?

A. No, sir, just as sure as I am sitting right here.

Q. Question again. "Did you meet Mr. Kribs there then and make the sale with him personally, or did Mr. Thompson arrange the sale for you? A. I seen Mr. Kribs personally. Q. Did you agree on the price which you was to receive and that Mr. Kribs was to have the land? A. Yes, sir."

A. I don't know anything about it.

Q. Well, did you answer that question that way?

A. I don't remember it.

Q. Was Mr. William Mealey in the room while you were?

A. Yes, sir, I think he was. One of the Mealey brothers.

Q. Were they giving you any instructions?

A. No, sir.

Q. As to how you should answer?

A. No, sir.

Q. "Q. Did you borrow any of the money with which you paid the Government for this land? If so, how much and of whom? A. \$600.00 of Mr. Kribs."

A. I never borrowed any money of Mr. Kribs.

Q. Or of anybody else? A. No, sir. [260]

Q. "How much money was paid you by Mr. Mealey? A. \$240.00, being the balance over the \$600.00 which was due on the mortgage."

A. I don't know nothing about it.

Q. Did you answer that question that way?

A. No, sir, I don't think I did.

Q. Did you tell that Special Agent you received \$240.00?

(Testimony of J. A. Steingrandt.)

A. I don't think I did. If I did I don't remember it.

Q. What is your recollection now as to the amount of money you did receive for the use of your right upon that land? A. Fifty dollars.

Q. Well, do you wish to—do you wish us to understand now that you got \$75.00 in addition to that?

A. Well, I don't know whether that was in addition to that or not.

Q. What was the circumstances under which you received any \$75.00?

A. Why, the Mealey brothers and I done dealings times before that in different things, and I thought to myself, there might be sich a thing he was helping me out because I was a poor man, that much money, being I hadn't received enough for the claim.

COURT.—What did he say when he gave you the \$75.00?

A. He said, "Here is \$75.00 I will let you have, if it will do you any good." Never told me what for.

COURT.—You didn't ask him?

A. No, sir.

COURT.—Just took the \$75.00?

A. No, sir, I just took the money. If he wanted to give it to me. [261]

Q. How near was that to the time at which those affidavits were made? A. I don't remember.

Q. Wasn't it about the time you came down here before the grand jury? A. No, sir.

Q. About four years ago?

A. No, sir, I had my own money to pay my way

(Testimony of J. A. Steingrandt.)

down here that time.

Mr. McCOURT.—I want to put in evidence the mortgage Steingrandt and wife to Fred A. Kribs, dated *Augus* 27, 1900.

Marked "Government's Exhibit 28."

Mr. McCOURT.—I also want to put in evidence the deed of Steingrandt and wife to F. A. Kribs, bearing date the 1st day of September, 1900.

Marked "Government's Exhibit No. 29."

Q. There was a matter I started to refer to, but I didn't have the papers. The other day, up there in the office of the United States Attorney, Mr. Good—W. G. Good and Mr. Bruce Kester being present, and yourself, a few days ago, April 21, do you remember being there at that time?

A. Yes, sir, I do.

Q. And talking with them about this case?

A. Yes, sir, he asked me some questions about it and I answered it.

Q. Don't you remember saying to Mr. Good there at that time, in the presence of Mr. Kester, that you never did any bargaining with any of them after the original talk and never expected to get more than \$50.00 out of it?

A. That is right—that is what I did.

Q. And your attention was called to that Burns affidavit there, at the time, was it not? [262]

A. Yes, sir.

Q. And you said that day, as you understood it stated the facts? A. Yes, sir.

Q. Do you recall Louis Maynard and J. W. Rozell being present at the time you made the affidavit be-

(Testimony of J. A. Steingrandt.)

fore Mr. Burns? A. Yes, sir.

Q. And signing it with you? A. Yes, sir.

Q. In the presence of Mr. Burns?

A. Yes, Burns and Heney was both there.

Mr. McCOURT.—I offer the Burns affidavit in connection with the witness' statement.

Mr. LIND.—It is incompetent.

COURT.—It is not competent. He can refresh his memory from it.

Mr. McCOURT.—Very well, I will withdraw the offer.

Cross-examination.

(Questions by Mr. LIND.)

Mr. Steingrandt, how long had you known the Mealeys before you took this claim?

A. Why, I could not tell you just exactly. I have known them for the last twenty-five years, but I don't know just how far back it has been since I took the timber claim.

Q. What was your business at that time?

A. Why, just lived on a farm, on a little ranch up there.

Q. You are living on a farm?

A. Yes, sir, I am living on a farm now.

Q. Are you living on the same farm now? [263]

A. No, sir, am living on a piece of road land now I have got leased.

Q. Did you have a family? A. Yes, sir.

Q. You said you went to see Thompson, or William Mealey? A. Yes, sir.

Q. About this matter? A. Yes, sir, I did.

Q. Well, now, who did you go to see?

(Testimony of J. A. Steingrandt.)

A. I think I went to the Mealey brothers, both of them.

Q. Now, I wish you would tell me just what you said to them and what they said to you.

A. Why, I went to them and asked them if they could locate me on a piece of timber claim—timber land, and they said that they could, they thought, but didn't know for sure at present. Timber land was pretty well taken up at that time. Says "If we can find," he says, "a piece of land for you," he says, he says, "Why, we will locate you," and they did.

Q. What else was said? A. How is that?

Q. Was anything else said between you?

A. No, sir.

Q. Now, you stated in answer to the District Attorney that they promised you \$50.00?

A. Not at that time.

Q. When did they say anything about the \$50.00?

A. That was after I had proved up.

Q. At the time you gave your deed?

A. Yes, sir.

Q. Now, Mr. Steingrandt, didn't you kick on the price, \$50.00, didn't you tell Mealey that wasn't enough for that land? A. Yes, sir. [264]

Q. Didn't you kick pretty hard, didn't you tell him that you were letting your claim go too cheap?

A. Well, I might have, I don't remember.

Q. Well, isn't that how you come to get that \$75.00, not to make any stir about it?

A. How is that?

Q. Isn't that how you come to get that \$75.00 later, because you kicked on the price?

(Testimony of J. A. Steingrandt.)

A. Well, it might have been.

Q. Well, isn't it true? Now, we want the truth.

A. No, sir, I don't remember.

Q. Isn't it true that you kicked pretty hard and said that you would make trouble for them out among the neighbors? A. No, sir, I didn't.

Q. That there would be trouble among the neighbors? A. No, sir, I didn't.

Q. Unless they paid you a better price?

A. No, sir, I didn't. No, sir.

Q. Didn't you complain that they got more out of the claim than that, themselves?

A. No, sir.

Q. Did you know how much they got for their work?

A. No, sir, I don't. I never asked them.

Q. Did you think that the Mealey brothers had the money for that mortgage?

A. No, sir, I don't know whether—

Q. Where did you think that money came from, that went to pay for your claim?

A. I could not tell you.

Q. You know you gave a mortgage?

A. Yes, sir, I did.

Q. And what was that mortgage for? [265]

A. For to secure the land for the money that was paid on it.

Q. How much was paid to the Government?

A. Why, the Government price, \$2.50 per acre.

Q. Did you understand how much that would make? A. No, sir, I didn't think.

(Testimony of J. A. Steingrandt.)

Q. How?

A. I think I did. I think \$400.00 is what it cost, about.

Q. And the other expenses? A. Yes.

Q. And the locating fee? A. Yes.

Q. Did you figure on how the \$600.00 was made up? A. No, sir, I didn't. I never did figure it.

Q. When did you first hear about the amount of that mortgage? A. How is that?

Q. When did you first learn what the amount of the mortgage would be?

A. Why, I never did learn what the *mortgage*.

Q. You signed it, did you not?

A. Yes, sir.

Q. Didn't you look into it then?

A. No, sir, I didn't.

Q. Who was present when you signed it?

A. Why, I think Mr. Mealey, William Mealey, was present in there.

Q. Who was he in *their* with, if you remember?

A. I don't know who he was.

Q. A lawyer—was there a lawyer there?

A. Might have been a lawyer, might have been just a Justice of the Peace. I don't know, I am sure.

Q. A man who did the writing?

A. A man who did the writing, yes.

Q. Did you ask him any questions? [266]

A. No, sir, I did not.

Q. Did he ask you any questions?

A. No, sir, he did not.

Q. What did you think you were doing?

(Testimony of J. A. Steingrandt.)

A. Well, I just thought I was signing some papers that would secure the land. I naturally supposed I was doing right.

Q. What kind of papers?

A. Why, I naturally thought it was a mortgage.

Q. Were you not curious to know how much it was for? A. No, sir.

Q. You expected to pay it some time, if you didn't sell the land, didn't you? A. Yes, sir.

Q. You signed a note too, did you now?

A. I don't remember signing any note.

Q. Did Mealey ask you for a deed at that time?

A. No, sir, he didn't.

Q. Did you expect to give a deed at that time?

A. Well, I naturally supposed maybe I had to some time, when I got it.

Q. When you got what? A. The deed.

Q. You mean when you got title?

A. Yes, when I got title for my land, yes.

Q. Did you ask Mealey how he expected to raise the money on the land? A. No, sir, I didn't.

Q. What did you understand? What is your idea about it?

A. Well, sir, I could not tell you.

Q. Had you made any bargain with anybody about that land before the time you went to Roseburg to make final proof? [267]

A. No, sir, I didn't.

Q. Well, had you in your mind, indirectly?

A. No, sir, I never bargained it to anybody or made any agreement with anybody.

Q. Well, did you feel that the land was just the

(Testimony of J. A. Steingrandt.)

same as your land when you proved up?

A. Naturally supposed it was mine until I got my patent for it. The deed, whatever it was.

Q. You mean the regular Receiver's receipt, the duplicate, we call it?

A. Yes, the Receiver's receipt.

Q. Was that usually called duplicate?

A. Yes, the same I got for the homestead. I supposed after I got the duplicate receipt it was mine until I got title for it. My Government patent.

Q. After you got that duplicate, when you had proved up, did you feel that anybody else in the wide world had any interest in that land but you?

A. No, sir.

Redirect Examination.

Q. You knew the duplicate was issued right there while you were proving up?

A. Maybe it was, for all I know.

Q. Did you ever see it at all?

A. No, sir, I never.

Q. When you got the duplicate, what were you going to do with the land? A. What was I?

Q. Yes. A. Sell it, if I got a chance.

Q. What did you think Mealey was going to get for all his trouble?

A. I don't know. [268]

Q. Did you think he was doing it just for glory, to be good to the neighbors up there?

A. He might have got four bits for it or he might have got a thousand for it.

Q. What did you think he was going to get if you kept the land?

(Testimony of J. A. Steingrandt.)

A. I could not tell you if I kept the land, *except would* have to raise the money to redeem the mortgage with and I could not do that.

A. You never expected to redeem the mortgage, did you? A. No, sir.

Q. You understood that that mortgage was put there just as a kind of step in the transaction, didn't you? A. Might have been.

Q. You never expected to pay it—pay any mortgage? A. No, sir.

Q. At any time. Now, isn't it a fact, Mr. Steingrandt, that before you ever went to Mealey's at all that you understood that you could take up a claim under their direction and get \$50.00 for doing so, upon turning the land over to them?

A. I believe that is right.

Q. Isn't that why you went to see them?

A. Yes, sir.

Q. Wasn't that why you went ahead and took up the entry? A. Yes, sir.

Q. Did you ever expect to get any more than \$50.00 out of that claim? A. No, sir.

Q. And that is exactly what you got?

A. Yes, sir.

Q. Did you have that expectation before you filed? A. Yes, sir. [269]

Q. And isn't it a fact you understood the land was to go to Mealey or to whoever they directed?

A. Didn't have no understanding who the land should go to.

Q. You understood that, when you went to see them? That is what occurred?

(Testimony of J. A. Steingrandt.)

A. Something like that.

Mr. LIND.—Something like what?

Q. What did you understand they were working for?

A. I don't know. I didn't understand what they were working for.

Q. What did you understand they were trying to do?

A. I cannot tell you.

Q. Was—didn't you understand they were after the lands for themselves or somebody else?

A. Yes, I understood they were taking up lands, but who they were taking it up for—naturally I supposed *that were* taking for themselves. Didn't know who they were dealing with.

Q. You understood that you were going to turn the land to whoever that was they were dealing with?

A. Yes.

Q. Certainly. That is all.

Recross-examination.

Q. I will ask you one more question, Mr. Steingrandt. Is this what you mean? Now, note what I say. When you went to Mealey's and asked them to file you on a claim, did you mean you wanted the profit therefrom, or the value of it? If you got \$50.00, well, and if you could get more than \$50.00, well and good. If not, you would be content [270] to sell the land, when you got it, for \$50.00?

A. Yes, sir.

Q. That is the way you felt?

A. Yes, sir.

Q. Now, when you were down here and had this talk with Mr. Burns, did Mr. Burns threaten to send you to the penitentiary?

(Testimony of J. A. Steingrandt.)

A. He told me and told Mr. Rozell that he would indict everyone of us if we didn't sign the papers and tell the truth.

Q. Have you been told substantially the same thing since you came here as a witness?

A. How is that?

Q. Have you been told the same thing again since you came here as a witness?

A. No, sir; no, sir.

Redirect Examination.

Q. You told Mr. Burns the truth, didn't you? You told Mr. Burns the truth, didn't you?

A. Why, I guess I did; I thought I did, anyhow.

Witness excused. [271]

[**Testimony of Richard F. Malone, for the Government.**]

RICHARD F. MALONE, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live? A. Sweet Home.

Q. How long have you lived there?

A. Born and raised there.

Q. How is that? A. Born and raised there.

Q. Were you—you were living there in 1900?

A. Yes, sir.

Q. Know William R. Mealey how long?

A. Ever since I was a boy, I guess.

Q. And Judd Mealey? A. Yes, sir.

(Testimony of Richard F. Malone.)

Q. How long have you known John A. Thompson?

A. I guess ever *since have* been a boy.

Q. You were up there in 1900. I think you said that already. Do you know Fred A. Kribs?

A. Well, I do now.

Q. Do you recall Mr. Kribs coming into that part of the country in the spring of 1900? A. No.

Q. You don't remember it?

A. I don't remember it?

Q. You took up a timber claim there, Mr. Malone, in 1900. Do you remember that? A. Yes, sir.

Q. Will you kindly state to the Court the circumstances leading up to your making a filing upon that timber claim, and any conversation that occurred in relation to the same, and follow it on by the subsequent steps in the proceedings? [272]

COURT.—Go ahead. You can answer the question.

A. How is that?

Q. Just go along and tell who you went to see about it.

A. Oh, well, I saw the Mealey boys about taking the timber claim.

Q. Which one? Both of them?

A. Well, I think I talked with both of them. I think I did.

Q. What conversation did you have with them relative to taking a claim?

A. Well, they was to furnish me the money and I was to take the claim. They was to furnish the money to prove up—to file and prove up on.

(Testimony of Richard F. Malone.)

Q. And what else was there about it? What were they to get for furnishing the money?

A. I was to give a mortgage after I proved up, for the money that they let me have.

Q. And what did you do now?

A. Well, I went and located the land. Went to the Land Office and filed.

Q. Who was with you when you went to the Land Office to file?

A. Well, I think Mr. Lawrence, Mr. Watkinds—I don't know as I can just name all of them.

Q. Who paid your expenses to Roseburg at that time? A. I don't know.

Q. Who took you to see the land?

A. Mr. Thompson.

Q. Did you know the description of it at that time?

A. Yes, I had—I set it down. I had it on a paper at that time. I haven't got it by heart though.

Q. You set it down right there? A. Yes.

Q. Now, then, after you had filed at Roseburg, or when you went to file at Roseburg, did the same people go with you that went to see the land? [273]

A. No, Mr. Thompson did not go.

Q. He didn't go? Who went down with the party that went to Roseburg?

A. Well, I could not say now,—I have got the two trips mixed up—whether Mr. Mealey went both trips or not. He went one, but I could not say whether he went the first trip or not. I had the two trips mixed up.

Q. On the last trip was Mr. Mealey with them?

(Testimony of Richard F. Malone.)

A. Yes, the two of them.

Q. Both the Mealeys on the last trip down there?

A. Yes.

Q. How did you ascertain it was time to go on the second trip?

A. I think we was notified by the boys when it was time to go.

Q. What boys? A. Mr. Mealey's.

Q. And what sort of conveyance did they furnish to take you down?

A. I think that a man by the name of Gould went with the rig that time.

Q. Gould—what was Gould's first name?

A. Why, we called him Eckle.

Q. Alexander was his real name?

A. I don't know. We called him Eckle.

Q. Was he taking a claim?

A. I think he did.

Q. Whose rig was he driving?

A. His, I think.

Q. Who paid for it, do you know?

A. No, I don't.

Q. And when you hit the train did you pay any fare? A. No, sir. [274]

Q. Did you pay any expenses in Roseburg?

A. No, sir.

Q. Who paid them?

A. Don't know; could not tell you.

Q. Don't know who paid them. Did you see Mr. Kribs up there? A. No, sir.

Q. What? A. No, sir.

Q. Then, you went up to the Land Office and

(Testimony of Richard F. Malone.)

proved up? A. Yes, sir.

Q. Who went with you up there?

A. Why, all the crowd that was with us went up there.

Q. Who paid your proof money?

A. Couldn't tell you.

Q. Did you see any paid for you?

A. No, sir.

Q. Do you know who attended to that?

A. No, sir, I don't.

Q. Who did you understand was attending to it?

A. I supposed the Mealey boys.

Q. You didn't see any money?

A. No, I saw no money.

Q. In transfer. Well, after you had proved up what occurred?

A. Well, then we come across the street and I signed a mortgage for this money that they had put up for me.

Q. How much did they put up for you?

A. I don't know what the amount was.

Q. What did you think they were putting up for you?

A. I don't know as I even asked.

Q. You didn't pay any attention to the amount of the money? A. No, I didn't.

Q. Did you figure that they were loaning you any money? A. How is that? [275]

Q. Did you figure that they were loaning you any money?

A. Well, one way; that is, they was to pay my expenses and I was to give a mortgage afterwards.

(Testimony of Richard F. Malone.)

Q. Did you make any inquiry what your expenses had been? A. No, I didn't.

Q. Had you been to any expense?

A. Not none of my own. I hadn't put up nothing of my own.

Q. How big a mortgage did you sign?

A. I can't answer that; don't know.

Q. Did you ever pay any mortgage?

A. How is that?

Q. Did you ever pay any mortgage since then?

A. I guess I surely did when I sold my land.

Q. How much did you pay?

A. How much I paid afterward?

Q. Yes.

A. I didn't pay nothing. I turned my land over.

Q. To whom?

A. I suppose to Mr. Mealey,—made the deed out. I sold to them, rather.

Q. Who had you borrowed the money from?

A. I suppose from them; don't know.

Q. Don't know anything about that at all. Never inquired that—who made the deal?

A. No, sir, I didn't.

Q. How much did you get? A. \$50.

Q. When did you first discover that you were going to get \$50 for the transaction?

A. When did I first?

Q. Yes.

A. Well, I was satisfied of that before I took the claim.

Q. Sure. Did you—what satisfied you of it?

A. Well, that was the understanding, that if a

(Testimony of Richard F. Malone.)

man proved up [276] he would make as much as \$50 out of it.

Q. And who would pay him the \$50?

A. Well, I supposed it would be the Mealey boys.

Q. What were they going to get for this \$50?

A. The land, I suppose.

Q. That was what you understood before you ever started in?

A. Well, I don't know as it was just exactly said that way. I could not word it as said that way.

Q. It wasn't worded at all, but you understood it that way?

A. Yes, I might have understood it that way, but it wasn't worded that way.

Q. Where did you—how did you get this information that they would give \$50 for those claims?

A. Well, I was around town all the time and I heard everybody talking. I was there all the time.

Q. What was the talk?

A. That was the chief—that was the chief talk all over town there—everybody.

Q. When they were talking, what would they say?

A. Anybody that would take a claim could get as much as \$50 for it.

Q. From the Mealey boys?

A. Yes, I suppose maybe they had people talk it.

Q. After you heard that, what did you do?

A. I talked that some.

Q. What did you say?

A. I asked about that myself. Said I guess I can get as much, maybe, as \$50 out of it.

COURT.—Who? Mealey? A. Mealey.

[277]

(Testimony of Richard F. Malone.)

COURT.—Which one?

A. Can't say which one—maybe both.

Q. When did they first talk about this mortgage business?

A. That was right at the start.

Q. What?

A. Told me if I got any money I would have to give a mortgage after I proved up.

Q. When were you to turn it over and get the \$50?

A. How is that?

Q. How soon after you proved up were you to turn it over and get the \$50?

A. Nothing said about how soon.

Q. Did you ever—did you know Fred Kribs in the transaction?

A. No, sir.

Q. Did you see him down at Roseburg?

A. No, not that I know of.

Q. Now, did you get any money when you signed the mortgage at Roseburg?

A. Not that I remember of.

Q. You never borrowed any \$700 in that transaction, did you?

A. I never had no money.

Q. Did you sign a note?

A. I guess I did if there is a note with the mortgage. I don't remember just what I did sign. I remember about the mortgage.

Q. Who did you give the mortgage to? Who took it? Who took the papers?

A. I don't know who the mortgage was drawn up to.

Q. Where did you go to sign it?

A. It was across the street from the Land Office. I don't know whereabouts. [278]

(Testimony of Richard F. Malone.)

Q. Were you married at that time?

A. Yes, sir.

Q. Was your wife there at Roseburg?

A. No, sir.

Q. Where was she? A. Sweet Home.

Q. How long after that—after signing the mortgage was it that you signed the deed?

A. I don't remember just how long it was.

Q. Well, what is your recollection now?

A. A short time, probably something—maybe a week. I could not say exactly.

Q. Just a few days, wasn't it?

A. Just a short time, at any rate.

Q. And who came to you to get the deed?

A. Well, I couldn't say. I could not say which one of the boys—which one of the Mealey boys. I could not say which one.

Q. What payment did he make to you at that time?

A. I know I got \$50 when I signed it.

Q. Did he hand the mortgage back then?

A. I asked for it back then.

Q. And Mealey had it and gave it to you?

A. I don't know whether he gave it right then or not. If he didn't it was shortly afterwards.

Q. What?

A. I don't know whether he gave it then or not. If he didn't it was shortly afterwards. I could not say about that.

Q. Is this the mortgage that you mean? Just take it and look at it. Is that the mortgage?

(Testimony of Richard F. Malone.)

A. Yes, sir, that is my handwriting.

Q. That is your signature? A. Yes, sir.

Mr. McCOURT.—I offer that in evidence.

Marked “Government’s Exhibit 30.” [279]

COURT.—What is the date?

Mr. McCOURT.—The 9th of October.

I offer the deed in connection with it of Richard F. Malone and wife to F. A. Kribs, dated the 12th day of October, 1900, filed for record on the 15th day of October, 1900, conveying the same land embraced in the entry of the witness now on the stand.

Marked “Government’s Exhibit 31.”

Q. Do you remember after signing that deed, Mr. Malone, appearing at the residence of Wodtli in connection with your entry?

A. Yes, sir.

Q. How did you come to go there?

A. Well, I was notified I was wanted there.

Q. By whom?

A. Well, I don’t know as I could tell exactly who I was notified by. I have forgotten that.

Q. Well, when you arrived there, who was there?

A. Well, Mr. Mealey; oh, there was quite a crowd there. I don’t know as I can name them.

Q. What conversation did you have with either of the Mealey boys before you went in to make your affidavit?

A. Well, I don’t know hardly what the conversation—what the conversation was.

Q. Well, now, did they give you any instruction?

A. I don’t know.

Q. You remember in that—who was there at the

(Testimony of Richard F. Malone.)

time? A. No, I don't.

Q. Who—how many were in the room?

A. In the room where I went in?

Q. Yes.

A. I could not say how many was in there; quite a few in there. [280]

Q. Entry men? Persons who had taken lands up there in that locality? A. Yes, sir.

Q. In the room where the Special Agent was?

A. I think so.

Q. You remember whether a young lady was there running the typewriter?

A. Yes, I think there was.

Q. Do you remember being asked this question at that time: "Who, if anyone, located you and selected the land? A. Mr. John Thompson. Q. What, if anything, did you pay him for his services?

A. Yes, I paid him \$50."

A. No, I could not say whether I answered that.

Q. Were you in a state of mind at that time that you would have answered it in that way?

A. I don't know whether I would or not.

Q. That wasn't the truth, at any rate, was it?

A. I hadn't paid nothing for it.

Q. And you haven't since?

A. (Witness laughs.)

Q. Did you own any property at that time?

A. I think not; I wouldn't say, however, sure; I don't think so.

Mr. LIND.—I could not hear either the question or the answer.

Mr. McCOURT.—I asked him whether he owned

(Testimony of Richard F. Malone.)

any property or not at that time.

Mr. LIND.—What was the answer?

A. I don't think I did at that time. I am not right positive.

Q. "What disposition have you made of the land?

A. Sold it to Frederick A. Kribs for \$850." Do you remember that [281] question and answer?

A. No, I don't remember that.

Q. Did you make—did you make any such answer there at that time?

A. I don't think I did.

Q. Were you asked how much you had sold your claim for?

A. I don't know whether I was or not; I don't remember it.

Q. Do you recall whether anybody told you when you were in there—when you should go in there—to make such an answer to such a question?

A. No.

Q. If it was asked you? A. No, sir.

Q. You say you never saw Mr. Kribs?

A. Not at that time.

Q. You have seen him since?

A. Saw him since, yes, sir.

Q. Lately?

A. Saw him—yes, a week or two ago.

Q. He was up there in that community, was he not? A. I just saw him when he was up there.

Q. Did he call on you and talk to you?

A. No, sir.

Q. "How much money did Mr. Mealey deliver to you in payment of the land when you gave him the

(Testimony of Richard F. Malone.)

deed? A. \$850. Q. Why should he give you \$850 for Mr. Kribs, when you already owed Mr. Kribs \$700? A. \$850 was what I was to get for my claim. He gave me \$150 when I delivered the deed." Do you remember those questions and answers?

A. Don't know as I do; don't believe I remember them.

Q. That was not a fact, whoever answered it, was it? A. No, sir.

Q. I will ask you if at the time you made final proof you [282] remember besides Alex Gould being there, of John J. Gilliland being there?

A. I think he was.

Q. Jasper H. Keeney? A. Yes, sir.

Q. His wife? A. I think so.

Q. Keeney's wife? A. Yes, sir.

Q. William J. Lawrence?

A. Yes, I believe he was.

Q. Richard F. Malone?

A. That is myself.

Q. That is yourself? Louis Maynard?

A. At final proof?

Q. Yes.

A. Yes, I believe he was there then.

Q. J. W. Rozell?

A. He may have been. I would not say for sure whether I saw him or not.

Q. Sydney Scanland? A. Yes, I saw him.

Q. Cornelius Tuthill?

A. I would not say about that.

Q. The old gentleman?

A. He might have been there, but I wouldn't—

(Testimony of Richard F. Malone.)

Q. You don't recall it?

COURT.—Mr. Malone, at the time of the examination before the Special Agent, were the questions and answers written out in your presence?

A. Well, I don't know. They might have been—part of them.

COURT.—Who asked the questions? Who asked them of you?

A. I don't know the man at all. Didn't know him.

COURT.—Was he a Special Agent—pretending to be a Special Agent? A. I think so.

COURT.—Did he have a typewriter or stenographer there? [283] A. Yes, sir.

COURT.—The questions—you don't remember whether they were all asked and answered?

A. No, I don't remember whether they was or not.

COURT.—Was it read over to you after you completed your examination?

A. Well, I could not say whether it was or not. I tell you—

COURT.—How did you come to sign it?

A. I could not tell you that. I guess I signed it, but I could not tell you how.

COURT.—Where did you get the information upon which you based your answers?

A. There, you mean?

COURT.—Yes, for that Special Agent? You say in that answer that you sold this property to Kribs for \$850. Where did you get that information?

A. I don't know where I got that.

COURT.—You say you paid the locator a fee of

(Testimony of Richard F. Malone.)

\$50—agreed to pay him \$50 for locating. Where did you get that information?

A. I could not tell you that, either.

COURT.—Now, you said you didn't remember that Mealey said anything to you about what your answers should be before you went into the room. Did you hear him say anything to the other people standing around there?

A. He was in the room.

COURT.—I know, but outside. Counsel asked you if he said anything to you on the outside before he went into the room, and you said "Not to me," as I remember.

A. He was talking to the others, but of course I could not tell what he said.

COURT.—You don't know what he said? [284]

A. No, I couldn't say what he said to the others.

Q. (By Mr. McCOURT.) Wasn't it commonly understood among all you entrymen there that there was a little trouble there and that you were to stand by the Mealeys on it and answer up so as to make a good report?

A. Well, there was something like that, but I couldn't say just how.

Q. Who was leading the conversation of that kind there?

A. I don't know. That is, I called them boys. The crowd of us was all talking, and I couldn't tell exactly.

Q. Was Mealey circulating among you?

A. They was there, yes, talking to us all.

Q. Isn't it a fact that Mealey gave you the

(Testimony of Richard F. Malone.)

amount of that deed—the consideration named in that deed—and told you to tell the agent that is what you got?

A. I don't know whether I told that or somebody else told that.

Q. Was Mealey there?

A. He was in there.

Q. Was he answering part of the questions for you? A. He answered some.

Q. Did he answer all of those kind of questions—

A. Could not say.

Q. —relating to figures?

A. Could not say.

Q. What did the Special Agent say when Mealey was answering the questions for you?

A. The way I see that now, after he made these papers up he handed it to them to look it over.

COURT.—Handed it to whom? A. Mealey.

[285]

COURT.—The Special Agent did it?

A. That is the way it was.

COURT.—Who was the Special Agent?

A. I don't know his name at all.

Q. That is your signature, is it not, to this affidavit? A. I believe it is.

Q. There was a younger man there than the Agent himself. Do you remember his name?

A. No, sir.

Q. A man by the name of Van Zant? What part did he take in the deal, whoever he was?

A. I could not tell you. I don't remember much about that.

(Testimony of Richard F. Malone.)

Q. Did he ask any of the questions?

A. I could not say whether he did or not.

Q. Did he answer any of the questions?

A. Could not say.

Cross-examination.

(Questions by Mr. LIND.)

In this conversation that you had among you before you went into the house, the question of having given a mortgage was talked over, wasn't it? I mean, at Wodtli's, before you went into the house—before you went in to see the Special Examiner? You were talking about those claims generally, were you not?

A. We was talking something about them, yes.

Q. Well, the matter of having signed the mortgage came up, didn't it? Didn't you all talk that and say that you had given a mortgage? Wasn't that understood?

A. Well, I couldn't say now whether the rest of the boys said that or not. I knew I gave a mortgage, but don't know what the rest—

Q. Wasn't the talk that that mortgage included some amount [286] for the Mealeys for locating you? Wasn't the talk there among you that there was included a certain amount in that mortgage on account of the Mealeys locating you—that they got some of the proceeds of that mortgage?

A. I could not say about that.

Q. Well, you knew that yourself, did you not?

A. I don't know as I just understand the question just right as you ask it.

Q. You knew that you had given a mortgage for

(Testimony of Richard F. Malone.)

\$600 or \$700, didn't you?

A. I knew I gave a mortgage, but I didn't know how much. Didn't know what the amount of the mortgage was.

Q. Was there anything said about that in this talk that you had in the yard in front of Wodtli's house?

A. I don't know whether there was or not—about the mortgage.

Q. What was talked about there?

A. Well, we didn't know what—we didn't know what was there; didn't know what was going against. Didn't know what we was going up against. We didn't understand it.

Q. What were you told? A. How is that?

Q. What were you told? Did anybody tell you what was coming up?

A. Not only among ourselves. We was talking among ourselves.

Q. What did you talk among yourselves?

A. We was just kind of guessing—kind of guess-work what was going on.

Q. When you were doing that talking and guessing, didn't you talk that this mortgage included a certain amount for the Mealeys—for the Mealey boys? That they got something out of it for locating you? [287]

A. I don't know; I can't say about that—whether there was or not.

Q. Did you ever find out—did you know then how much the Mealeys sold the land for? You knew at that time that the Mealeys had sold the land, did you

(Testimony of Richard F. Malone.)

not? A. That they had sold it?

Q. Yes, that you had deeded?

A. That I deeded it away myself?

Q. Yes.

A. Yes, I knew I deeded it to them.

Q. You didn't sell it yourself, did you? You didn't negotiate the sale—you didn't make the sale yourself, did you? A. No, sir.

Q. Of the land. Who made it?

A. You mean, who made the sale?

Q. For you?

COURT.—Made the sale to Kribs—who sold this land?

A. Oh, to Kribs? I suppose I did, but I didn't know who I deeded it to.

Q. Well, as a matter of fact, didn't the Mealeys sell it? Don't you know that now, that they negotiated the sale? A. I suppose they did.

Q. You weren't having any talk with Kribs?

A. No.

Q. Never seen him in your life up to that time?

A. Didn't know him at that time at all.

Q. Wasn't it talked among you that the Mealeys got about \$800 a quarter for the land when they turned it over—sold it to Kribs?

A. Well, I don't know; I might have heard such talk as that.

Q. Well, didn't you, as a matter of fact? Now, think [288] it over. Wasn't that talked right there?

Mr. McCOURT.—I object to that as immaterial.

COURT.—I suppose counsel wants to know how

(Testimony of Richard F. Malone.)

the question came up; what conversation he had before he went into this room.

A. Of course, it is pretty hard for me to say what our conversation was. I don't hardly remember it.

Q. Did you ever inquire—did you ever hear it suggested what amount the Mealeys got for the land?

A. In a roundabout way, but not direct—straight.

Q. Now, what did you learn in a roundabout way? That is what I want to get at.

A. Well, I always heard \$700 or \$800—along there.

Q. When did you hear that? Now, we are getting along nicely. I want you to answer these questions frankly—just as you know them.

A. I had been hearing that right along, all the time, but I didn't know.

Q. Heard it from the time of the sale, didn't you?

A. Yes, but didn't know.

Q. Didn't know how much they got?

A. No.

Q. You were contented to sell as long as you got your \$50? A. Yes, sir.

Q. Now, did you know when you went down to file on this land that the Mealeys were going to sell it for you? A. No, sir, not that way.

Q. What did you hear—what way did you know it?

A. What way did I know they was going to sell it for me?

Q. Yes.

A. Why, I didn't *know was* going to sell it for me at all. [289] Thought I would sell it when I proved

(Testimony of Richard F. Malone.)

up, maybe.

Q. You did think that you would sell it yourself?

A. Yes.

Q. When did you come to a different conclusion?

A. I didn't know I had come. I thought I did sell it.

Q. Why, you knew you hadn't sold it before you entered it?

A. No, not before entered, but afterwards—after I proved up.

Q. Well, you thought you sold it through the Mealeys? A. Yes.

Q. Or to the Mealeys?

A. To the Mealeys; yes, sir.

Q. Had you ever intended to sell it before that time? A. Before I proved up?

Q. Yes. A. No, sir.

Q. Had you ever bargained to sell it?

A. No, sir.

Q. Had you ever intended to sell it before you proved up? A. No, sir.

Q. Now, Mr. Malone, if somebody had come to you about the time you proved up at Roseburg and the time you gave the deed to the Mealeys, and offered you a thousand dollars for that claim, would you have taken it?

A. I might have, if I could have got rid of that mortgage.

Q. Well, you would have had the money then to pay the mortgage, wouldn't you?

A. I suppose I would.

Q. Now, what I want to get at—and I want you

(Testimony of Richard F. Malone.)

to tell me the absolute truth—was there anything to prevent you from selling that claim, subject to the mortgage, after you had proved up on it?

A. Of course, I don't know as there was, myself. I don't know myself. I don't understand it well enough to know. [290]

Q. Had you said or done anything that would have prevented you from selling it?

A. Not that I know of.

Witness excused.

Whereupon proceedings adjourned until Wednesday, April 27, 1910, at 10 A. M. [291]

Portland, Ore., April 27, 1910, 10 A. M.

[**Testimony of Samuel D. Pickens, for the Government.**]

SAMUEL D. PICKENS, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Q. Where do you live, Mr. Pickens?

A. Foster.

Q. How long have you lived there?

A. Oh, I have lived around that neighborhood for 50 years.

Q. Do you know O. J. Mealey and W. R. Mealey?

A. Yes, sir.

Q. Did you know them as early as 1900?

A. Yes, sir.

Q. How long had you known them prior to that time? A. Which?

Q. How long had you known them before that?

(Testimony of Samuel D. Pickens.)

A. Well, quite awhile. I don't just know.

Q. How near to them did you live?

A. About seven or eight miles.

Q. Do you know John A. Thompson?

A. Yes, sir.

Q. How long had you known him before that?

A. Oh, quite awhile; ever since he come to the country; I don't know just how long that was.

Q. You knew him before that time too?

A. Yes, sir.

Q. Do you know Fred Kribs? A. No, sir.

Q. Never met him?

A. Never saw the man till I saw him here. They said it was him—that was all I know.

Q. Are you a married man? A. Yes, sir.

[292]

Q. Were you married in 1900?

A. Yes, sir.

Q. What was your business then?

A. Well, working.

Q. How is that?

A. Working around on a ranch.

Q. A farm hand?

A. Yes, a farm hand.

Q. Do you recall taking up a timber claim up in that country in 1900? A. Yes, sir.

Q. Tell the Court what led up to your taking it, and what you did in regard to it.

A. Well, I just told the Mealeys I wanted a timber claim, and I just spoke to the Mealeys to locate me.

Q. How did you happen to go to Mealeys?

(Testimony of Samuel D. Pickens.)

A. Well, they was in the business of locating.

Q. How long had they been in the business of locating when you went to see them?

A. Well, I couldn't say just how long.

Q. About how long?

A. Well, I couldn't say.

Q. Two months?

A. Yes, and maybe longer. I couldn't say. It has been so long ago—I didn't pay much attention to it.

Q. Well, what had you heard about them before you went to see them?

A. Well, I never heard nothing that amounted to anything.

Q. Well, what was the proposition?

A. Well, to go up into the timber and run through it.

Q. What inducements were they offering you to locate? [293] A. Nothing at all.

Q. Nothing?

A. No. Well, I wanted a claim—I wanted a timber claim.

Q. What did they say to you when you went to see them?

A. Well, they said all right—maybe they could locate me.

Q. What did they say they would do besides locating you?

A. Well, go to Roseburg and prove up.

Q. What?

A. To go to Roseburg and make final proof.

Q. Who would? A. I would.

(Testimony of Samuel D. Pickens.)

Q. What would they do? A. Which?

Q. What did they say they would do?

A. Well, I don't know just what they did say.

Q. Yes, you do. Now, tell us.

A. To locate me on a piece of timber.

Q. Who was going to pay your expenses?

A. They was—they was going to pay the expenses.

Q. What else were they going to pay you besides expenses? A. Pay everything.

Q. What were you going to get out of it?

A. Well, I don't know what I was going to get out of it at the time.

Q. What?

A. I don't know at the time what I was going to get out of it.

Q. You don't? Well, what did you think you were going to get out of it?

A. Well, I didn't know.

Q. What? [294]

A. I didn't know then just what I would get out of it.

Q. Whom were you going to get what you were going to get out of it from?

A. I couldn't say that.

Q. What? A. I don't know.

COURT.—What did you take the claim for?

A. Why, I took my claim to sell it.

Q. Well, who was with you when you went up to look at the land?

A. Well, there was Will Wiley and George Pickens and Tom Parker and Billy—no, not Billy; he wasn't there; Bill Mealey and Oliver Erickson and

(Testimony of Samuel D. Pickens.)

Joe Steingrandt.

Q. Andrew and Charles Wiley there?

A. Charles Wiley, yes.

Q. Joseph H. Steingrandt. Did they all go up in the timber the same time you did?

A. Yes, sir. And a man by the name of Mickalson too.

Q. Joseph Mickalson? A. Yes, sir.

Q. Was either one of the Mealey boys along?

A. Yes, sir.

Q. Which one? A. Will Mealey.

Q. How long did it take you to examine the timber?

A. We was gone about two days, I think.

Q. And how long after you came back was it before you went to Roseburg?

A. I don't know just how long.

Q. Well, about how long?

A. Oh, it might have been a week.

Q. Well, how did you get from Foster, then, to Roseburg? [295]

A. We went through—went down by Albany, through Lebanon, that way.

Q. Who furnished the conveyance?

A. Well, sir, the Mealeys. I suppose they did.

Q. What?

A. I don't know whether they took their team or not—I couldn't say; but then they went down, I think some of us on the hack. I don't know just how we did get down now; don't just recollect whether they had a team along or not.

Q. Who paid your railway fare?

(Testimony of Samuel D. Pickens.)

A. Mealeys.

Q. And your hotel bill?

A. Mealeys. I suppose they did.

Q. And when you went the second time, to make proof, who paid your expenses?

A. Everything was paid.

Q. Did you have anything to do with publishing notice of final proof? A. Which?

Q. Did you have anything to do with publishing any notice in the paper about making proof on your timber claim? A. No.

Q. What?

A. No, I had nothing to do with that at all.

Q. Who gave you the description of your land?

A. Mealeys—Bill Mealey.

Q. Did he show you over the quarter section that you took?

A. I was over, I don't know how much of it.

Q. Did you ever get onto it at all? [296]

A. Oh, yes. Yes, sir; I was onto it.

Q. What? A. Yes, I guess I was.

Q. Do you know where it is to-day?

A. No, sir, I don't suppose I could find it to-day.

Q. Never been back there since?

A. Never been back there since.

Q. Now, when you went to Roseburg, did Oliver Erickson go with you? A. Yes, sir.

Q. On the train? A. Yes, sir.

Q. Sure? A. Oliver Erickson?

Q. Yes. A. I think he did.

Q. Didn't he ride a bicycle down?

A. Well, sir, that is so. He did ride a bicycle

(Testimony of Samuel D. Pickens.)

part way all right. I don't know just where he got a bicycle on the road, some place, that is right. It is so long ago, I don't just remember everything.

Q. But he showed up there at Roseburg at the time of proof?

A. Yes, sir, he showed up there.

Q. Well, now, did all of you go to the Land Office together? A. Yes, sir.

Q. Well, after you had made proof, what did you do?

A. Well, then I went out to a lawyer's office and made out a mortgage.

Q. To whom? A. I suppose to Kribs.

Q. Well, did you know then who it was to?

A. No, I didn't. [297]

Q. Did you make any inquiry?

A. No, sir, I never inquired.

Q. Did you know how much it was for?

A. Well, I guess \$600, or something—enough to pay.

Q. Well, at that time did you know?

A. No, I didn't know at the time.

Q. You made no inquiry?

A. I made no inquiry.

Q. Did you do any figuring with Mealeys to find out how much expenses they had been to?

A. No, I did not.

Q. They never told you, did they? Did they ever tell you?

A. I don't think they ever did. I never heard anything about it.

Q. Never inquired? A. Never inquired.

(Testimony of Samuel D. Pickens.)

Q. What did you do after you signed the mortgage?

A. Well, after signing the mortgage we went home after a little,—went back home.

Q. Went back home? A. Yes.

Q. When did you get your \$50?

A. After signing the deed to deed it over.

Q. How long was it afterwards you signed the deed?

A. I couldn't say. It wasn't a great while.

Q. About three or four days, wasn't it?

A. Probably.

Q. As soon as you had gotten home?

A. Yes, as soon as we got home, I guess, three or four days.

Q. Your wife wasn't down at Roseburg, was she?

A. No, sir. [298]

Q. Did you see Kribs at Roseburg?

A. No, sir. I didn't know him.

Q. Who paid for your land? Who paid the purchase price to the Government for the land?

A. Well, I suppose Mealeys.

Q. Now, isn't it a fact that before you went to see Mealey about filing you at all, you had heard in the community there—it was generally reported around there—that they were paying \$50 for persons to locate on land?

Mr. LIND.—That is objected to as leading, and there is no evidence to which that could apply.

COURT.—He may state what he heard about that, I think.

A. I never heard anything about it. Oh, of

(Testimony of Samuel D. Pickens.)

course, I did hear, too, rumors around, you know, about \$50 in it.

Q. Well, was that what caused you to go and see Mealeys? A. No.

Q. What?

A. No, that wasn't what caused me.

Q. Well, what caused you to go there?

A. Well, I just thought maybe I wanted a timber claim?

Q. What? A. I wanted a timber claim.

Q. You wanted a timber claim?

A. Yes, sir.

Q. How long did you keep that timber claim when you got it?

A. Well, I didn't keep it very long.

Q. What kind of money did Mealeys pay you in?

A. Paid me in gold.

Q. What? A. Paid the gold coin.

Q. Out there at Sweet Home?

A. Yes, sir, right there at Foster.

Q. At Foster? Do you remember being down here in [299] 1904 or 1905? A. Yes, sir.

Q. Before the Grand Jury? A. No, sir.

Q. You were subpoenaed to appear before the Grand Jury? A. Yes, sir, I was subpoenaed.

Q. You didn't go before the Grand Jury?

A. No, sir.

Q. You were taken sick and went home?

A. Yes, sir.

Q. And nobody talked to you here?

A. No, sir.

Q. Did anybody talk to you after you went home

(Testimony of Samuel D. Pickens.)

about this transaction?

A. No, not for—till after I had to sign up an affidavit.

Q. Whom did you sign that affidavit before?

A. Bill Mealey.

Q. Did he draw it for you?

A. I don't know whether he did or not. He brought it there to my house to sign.

Q. I show you an instrument purporting to be an affidavit made by you before William R. Mealey on February 1st, 1905, and ask you if that is your signature?

A. I guess it is. It looks like it.

Q. I will ask you if you remember making this statement in that affidavit—

Mr. LIND.—That, your Honor, is objected to as immaterial. It is subsequent to the issuance of the patents in this case. It is in 1905, isn't it?

Mr. McCOURT.—Yes. It is for the purpose of refreshing the witness' memory, showing he made different statements at other times than he is making right now.

Mr. LIND.—It seems to me, your Honor, that the [300] ruling suggested on yesterday or the day before, that evidence of this character might be material under the theory suggested by District Attorney, does not reach this point. Here is an *ex parte* affidavit, made probably with reference to some other proceeding, after the patents had issued in this case.

COURT.—I understand the District Attorney is using it for the purpose of refreshing the witness'

(Testimony of Samuel D. Pickens.)

memory for cross-examination, not for substantive proof.

Mr. LIND.—Oh.

Q. Among other things, did you not state in that affidavit this: “He further states that some time about June of the year 1900 he decided to take a timber claim; he therefore went to the Mealey brothers and Thompson, as he knew them to be locators. He also says: ‘It was commonly known in the community that there was \$50 in it clear of all expenses.’ ”

A. I don’t know anything about that.

Q. Don’t remember making that statement to Mr. Mealey? A. No.

Q. Did he make it for you?

A. I don’t know whether he did or not.

Q. Did you read the affidavit that he had you sign? A. No, I never read it at all.

Q. What? A. Never read it.

Q. You didn’t read it?

A. No, sir, I didn’t read it.

Q. And do you remember this: “William R. Mealey showed me and several other parties our claims. O. J. Mealey went with us to Roseburg when we filed and paid all expenses incidental to the trip. My notice of final [301] proof fee was also paid, and when the time came to make proof, we went to the Land Office, and after I had proved up, on the afternoon of the same day, I went before an attorney, and made a mortgage covering the land to F. A. Kribs, for, I believe, \$700. Afterward the Mealey brothers or Thompson gave me \$50. I do not know who paid for the land at the Land Office.” Don’t

(Testimony of Samuel D. Pickens.)

you remember any of those statements?

Mr. LIND.—How does that differ from his statements here?

A. I don't remember a thing about it at all.

Q. You do remember the incident of signing the document?

A. That is just about all I do remember, yes, sir.

Q. Now, then, doesn't that state the truth there, that it was commonly known in the neighborhood that there was \$50 in it clear of all expenses?

A. There was no bargain made with me.

Q. I understand; but wasn't it commonly known there?

A. Well, yes, it was talked around that way.

Q. Yes? A. Yes.

Q. And that was why you went to see the Mealeys about it? A. There was no bargain made.

Q. I understand there was no bargain made; but that is why you went to see Mealeys, wasn't it?

A. Because there was \$50 in it?

Q. Yes, because you heard that?

A. Well, I couldn't say.

Q. What is that? A. I couldn't say.

Q. Well, that is all you got out of it, wasn't it?

A. Yes, it is all I got out of it.

Q. Did you ever do a thing in regard to that timber claim [302] except as you were told by the Mealeys to do?

A. No, I never. They was to see that I got a buyer, you know,—do all they could to get me a buyer.

Q. They did everything. Whom did you deed the land to? A. Kribs, I suppose.

(Testimony of Samuel D. Pickens.)

Q. Whom did you think you were deeding it to?

A. Kribs, I suppose it was.

Q. How did you know Kribs? Well, how did you know about Kribs?

A. I *din't* know a thing about him.

Q. Did you know Kribs was in the transaction at the time?

A. Well, I heard he was. That is all I know about it.

Q. How long did you hear that before you filed?

A. Well, I couldn't say.

Q. Now, do you remember, about a year after you had made the deed, of making an affidavit before a man of the name of Stratford down at Wodtli's?

A. Yes, sir.

Q. Who notified you to go down there?

A. I don't know just who.

Q. Well, who do you think it was?

A. I think Mealeys, though, I think.

Q. Which one of the Mealeys?

A. Well, I couldn't say which one.

Q. How did you get down there?

A. I walked down.

Q. How many people were there when you arrived? A. I couldn't say just how many.

Q. How far did you live from Wodtli's at that time?

A. At that time I was about half a mile, I guess.

Q. Where did you go to make your statement?

[303]

A. Wodtli's.

Q. Whereabouts—in the house?

(Testimony of Samuel D. Pickens.)

A. Yes, sir.

Q. Who was in the room when you got in there?

A. Well, I found an old fellow in there with a book, and a lady there with a typewriter and another fellow sitting there with a pen in his hand.

Q. Which one of the Mealey boys was in the room?

A. I don't know whether there was either one or not at the time. I couldn't say.

Q. What kind of a conversation did you have with either one of the Mealeys before you went in there?

A. Oh, I couldn't say just what now.

Q. Did you have some conversation?

A. Well, yes, I might—I don't know.

Q. Relative to what you would have to say when you got in there?

A. No, I didn't know just till I went in there what I would have to say.

Q. You didn't? Well, now, do you remember saying this: I will ask you first if this is your signature to the affidavit of claimant in Government's Exhibit 11?

A. My name? No, sir, that ain't my name at all.

Q. You didn't write that?

A. No, sir, I didn't write that, no, sir, I didn't.

Q. Did you sign any document there at that time?

A. No, sir, no documents there at all. I didn't sign nothing at all.

Q. Did they ask you many questions?

A. Oh, yes, they asked me some questions.

Q. All right. Do you remember them asking you this question: "Did Mr. Mealey or anyone else sug-

(Testimony of Samuel D. Pickens.)

gest to you that you enter this land? A. No, sir.

Q. What did [304] you pay Mr. Mealey for his services? A. \$50." Do you remember answering that? A. I couldn't say.

Q. Did you pay Mr. Mealey any \$50 for locating you? A. No, sir, I didn't.

Q. Or any other sum?

A. No, sir, I didn't.

Q. Do you remember this question: "What disposition have you made of the land since you obtained the title to it? A. I sold it to Mr. Frederick A. Kribs. Q. How much did you receive for it? A. \$840." Do you remember that?

A. I didn't receive any at all.

Q. Do you remember that question being asked you there?

A. It might have been. I couldn't say.

Q. Do you remembering answering any such question that way?

A. Well, no. I don't just remember anything much about that affidavit. I might have all right.

Q. Well, how could you have done it? You didn't know anything about there being any \$840 in the transaction, did you? A. No, sir, I didn't.

Q. Who gave you the information if you did so answer? A. Well, I couldn't say just now.

Q. Was it Will R. or Judd Mealey?

A. No, I don't think it was.

Q. Another question, "Who did you borrow the money from to pay the Government for this land and the other expenses? A. Mr. Frederick A. Kribs.

Q. How much did you borrow? A. \$600. Q. Did

(Testimony of Samuel D. Pickens.)

you have this transaction with Mr. Kribs personally, or with someone acting for him? A. Mr. Kribs personally." Did you ever have any transaction [305] with Mr. Kribs, personally?

A. No, sir, I never.

Q. Did you ever have any conversation with him at all?

A. Not at all, sir; not at all. Never saw the man till I saw him here the other day—they said it was Kribs.

Q. "Q. Now, is it not a fact that you did not handle any of this \$600 or of the \$840 except the profit which came to you in the deal? A. No, sir, I got the \$600 and paid it out myself."

A. Well, I never done it.

Q. You didn't pay out a cent, did you?

A. Didn't pay out a cent.

Q. Never saw a bit of money except \$50 that was paid you?

A. No, sir. That is just what I did.

Q. "How much money was paid you here at Foster at the time you delivered the deed? A. I don't know just exactly. Q. Was it \$840 or was it the difference between \$840 and the amount you owed Mr. Kribs on the mortgage? A. \$200 or \$250."

A. I didn't receive no money there.

Q. Don't you remember answering those questions now?

A. Well, I might have answered them, some of them. I might have answered some of them.

Q. You were prepared to answer anything in there that would help the transaction go through, weren't

(Testimony of Samuel D. Pickens.)

you? A. Yes—

Q. And all the rest of them were that were there at the time, weren't they?

A. To kind of clear it up, you know.

Q. Wasn't that the common talk among you there, that [306] you would go just as strong as was necessary, to make the thing go through?

A. To kind of clear it up.

Q. Well, did you think it was necessary to make all those false statements in order to clear it up?

A. No, sir; I didn't say that.

Mr. GEARIN.—He says he didn't sign that affidavit, Mr McCourt.

Mr. McCOURT.—He says he might have made them.

A. Yes, I might have made them. I couldn't swear to it.

Mr. McCOURT.—He says he was prepared to make any old statement.

Q. I wish you would look at that signature again, and see if you don't think that is your signature.

A. No, sir, that is not. I can't write that well. I ain't got education enough.

Q. Well, now, look at your signature upon your Timber and Stone Sworn Statement, here, or upon your Nonmineral affidavit, for instance, taken in the timber claim.

A. No, sir, I never wrote that.

Q. What? A. It is not my writing at all.

Q. Well, I guess you don't remember.

A. I don't know anything about that.

Q. I call your attention to your signature on the Timber and Stone Sworn Statement made upon your entry.

(Testimony of Samuel D. Pickens.)

A. No, I don't remember anything about that.

Q. Well, don't you remember signing any papers when you went to Roseburg?

A. I signed a—let's see that.

Q. You signed your proof paper, didn't you?

[307] A. I think I did.

Q. Well, look at your proof paper now, and see what you think of it.

A. Is that it there?

Q. Yes. A. I might have signed it.

Q. Yes, I guess you signed it all right. You were prepared to sign anything that was offered you to sign, in the transactions, weren't you?

A. Oh, I could have signed it, I guess just as well.

Mr. McCOURT.—I offer in evidence certified copy of mortgage to Frederick A. Kribs bearing date August 27, 1900, purporting to secure the sum of \$600 on the land embraced in the witness' entry.

Marked "Government's Exhibit 32."

Mr. McCOURT.—Also deed to Frederick A. Kribs of the entryman and wife to the same land, bearing date September 1, 1900.

Marked "Government's Exhibit 33."

Mr. McCOURT.—There isn't any question about it, but I would like to offer the original files in his entry for the purpose of comparison of signatures.

Mr. LIND.—Oh, well, I wouldn't encumber the record.

Mr. McCOURT.—Perhaps we can admit among ourselves that he did sign the affidavit.

Mr. LIND.—I presume so.

Mr. McCOURT.—No doubt of it in the world.

(Testimony of Samuel D. Pickens.)

Mr. LIND.—I presume he did, yes.

Mr. UELAND.—Here is the original deed. I think that would show.

Mr. LIND.—There is no issue on that anyway.

Mr. McCOURT.—No. The deed may go in if you [308] wish, with the original deed or with the other affidavit.

Mr. UELAND.—Mr. McCourt, suppose you let the original deed be in the record instead of the copy of deed. Then you have that for comparison, and withdraw your copy of deed.

Mr. McCOURT.—Yes, I can substitute the original for the copy.

Mr. UELAND.—Yes.

The original deed substituted for copy and marked “Government’s Exhibit 33.”

Q. Which of the Mealey boys did you see when you went to talk about a timber claim?

A. Bill Mealey.

Q. Which of them went with you when you went up to the timber? A. Bill Mealey.

Q. Who went with you to Roseburg?

A. Bill Mealey, I think. When we went to file on the land. It was one or two of them boys; whether they was both along or not, I couldn’t say.

Q. You never asked anyone else to buy your land?

A. No, sir, I never.

Q. You never asked anybody else to let you have money to prove up on your land? A. No.

Q. You understood before you ever filed that they would pay all expenses and all money of all kinds?

A. Yes, that was the understanding, that they

(Testimony of Samuel D. Pickens.)

was to pay the whole thing.

Q. And you also knew that they didn't have money of their own? A. Mealeys? [309]

Q. Yes.

A. They didn't have money—I suppose they could get money.

Q. What had they been doing before they started this locating business?

A. Well, they was ranching up there. They had a ranch up there.

Q. A mountain ranch?

A. A mountain ranch.

Q. How much of a ranch?

A. Oh, they had a pretty good ranch.

Q. How many acres?

A. Oh, I couldn't tell you that.

Q. What did they raise on their ranch?

A. Oh, they raised grass and stuff, kept stock there.

Q. Did you examine the deed at all that they brought to you to sign out there at the ranch?

A. No, I never. I just signed it.

Q. You made no question at that time of what they were going to pay you?

A. I don't think I did.

Q. They came right along and handed you the \$50, and you signed the deed? Neither one of you said a word about it.

A. That is about the racket.

Cross-examination.

(Questions by Mr. LIND.)

Do you remember when you signed that paper that

(Testimony of Samuel D. Pickens.)

you say Will Mealey brought to you to sign—the affidavit? This paper here?

A. Well, I remember him bringing something like that there. At that time I was pretty sick. I didn't pay [310] much attention to it.

Q. What was the occasion? What was going on in Portland at that time?

A. Well, I suppose Court. I don't know what else.

Q. That was the time that they had the Grand Jury in session? A. I think so.

Q. And found indictments? A. Yes, sir.

Q. And sent the marshal after settlers up in your section? A. Yes, sir, I think so.

Q. You signed that statement so that you wouldn't have to go—wasn't that it?

A. Yes, sir, I thought that would clear it up maybe.

Q. Well, didn't you understand that Burns had dictated that and sent it up for you to sign?

A. Yes, sir, I did.

Q. Did Mealey tell you so?

A. Yes, sir, Bill Mealey told me that.

Q. And he told you if you signed that paper and sent it to Burns you would not have to go down?

A. Yes, sir, that would let the thing out.

Q. As a matter of fact, you were pretty frightened?

A. Well, yes, I didn't know but maybe they were going to hang me.

Q. And you are still frightened, are you not?

A. Well, no, not so very bad.

(Testimony of Samuel D. Pickens.)

Q. Not so very bad? A. No.

Q. You have had a number of conferences with the District Attorney when you came down, have you not?

A. Oh, I have been talking with some of them.
[311]

Q. Well, he has hauled you over the coals a good deal, hasn't he?

A. Well, all he told me was to tell the truth. As long as I tell the truth, I guess it is all right.

Q. Now, have you told the truth frankly?

A. Well, I aimed to.

Q. How?

A. I aimed to tell the truth.

Q. Now, I will ask you a few questions and see if you cannot refresh your memory. Do you remember the occasion when you were at Wodtli's house, when the special agent was up there, a year after—about a year after you had made your timber claim?

A. Yes.

Q. What time of the day were you there?

A. Well, *sit*, I don't know. It might have been along in the afternoon now; I don't know; probably it was along in the afternoon.

Q. How did you find out that you were wanted there?

A. Well, through Mealeys, and then I think it was in the papers, you know. Some way I found it out all right. I don't know just exactly how. I couldn't swear.

Q. Where did you stop when you first got to Wodtli's place?

(Testimony of Samuel D. Pickens.)

A. Stopped right at the house.

Q. Did you go into the house the first thing?

A. Well, I think I did, yes. I went right in the house. I think I did—of course I don't know positive.

Q. Didn't you say a moment ago that there was quite a number of men there?

A. Oh, there was a few there. I don't know just how many.

Q. Where were they—in the house or outside?
[312]

A. Some of them was in the house, some on the outside.

Q. What were they talking about?

A. Well, sir, I couldn't say hardly now. I don't remember much about that. My memory is awful—I can't remember anything any more.

Q. Wasn't that the first time that you ever heard Kribs' name mentioned to know it?

A. Yes, I don't know but it was.

Q. Well, had you heard—now, we want to find out—had you heard Kribs' name mentioned before?

A. Well, I couldn't say.

Q. Wasn't it the talk there among the men that you had given a mortgage to Kribs, that Kribs was the man that you had given the mortgage to?

A. Yes, sir; I think so.

Q. And that it was for \$600 or some such amount? A. Yes.

Q. Wasn't that talked among the men standing there at Wodtli's?

A. Yes. Yes, it was. I remember that.

(Testimony of Samuel D. Pickens.)

Q. Wasn't it also talked that this land had been sold by the Mealeys to Kribs for about \$800?

A. Yes, sir.

Q. \$840? A. Yes.

Q. Isn't that where you got your figures?

A. Yes, it is something about there.

Q. Didn't all of them understand at that time, who were there at Wodtli's, that that was the situation? A. Well, they ought to.

Q. How?

A. I say they ought to understand it—something like that. [313]

Q. Well, that was the talk among you?

A. Yes, sir, it was. Yes, it was the talk amongst us.

Redirect Examination.

Q. Where did you get the figures when you answered that you had paid him \$50 for locating you?

A. Where did I get the figures?

Q. Yes.

A. Well, I suppose they—well, I couldn't say.

Q. Where did you get the figures when you stated that you had the whole \$600 mentioned in the mortgage in your own hands personally, and paid it out?

A. Where did I?

Q. Yes.

A. I don't remember anything about that.

Q. Where did you get the figures when you stated in your affidavit that you had received from \$225 to \$250 in cash for your land?

Mr. LIND.—The witness didn't testify that he so stated at any time.

(Testimony of Samuel D. Pickens.)

Mr. McCOURT.—It was in his affidavit over his signature.

Q. Now, you say the first time you ever heard of Kribs was down there at Wodtli's?

A. I think so. I don't know.

Q. Didn't you hear of Kribs before you ever filed at all, he and C. A. Smith coming into that country there, stopping at the Mealeys?

A. Not that I recollect anything about.

Q. What?

A. I don't recollect anything about it. I didn't pay much attention to it.

Q. Wasn't it commonly talked that C. A. Smith had been [314] in there, and that he was a rich man and could buy the whole of Linn County?

A. No, I didn't know anything about that.

Q. Didn't know anything about it. Now, this affidavit that you talk about here that Mealey had, he wrote it right out there in your presence, didn't he?

A. No, sir, he didn't.

Q. Sat right down there with a pen and wrote it?

A. No, sir, he didn't.

Q. Did he have it all ready when he got there?

A. It was all ready when he got there for me to sign it.

Mr. McCOURT.—I want to offer this affidavit showing it was in Mealey's handwriting and not made by Burns.

Mr. LIND.—That is admitted.

Mr. McCOURT.—Admitted that it is in Mr. Mealey's handwriting.

Mr. LIND.—It is admitted that it is in Mr. Mea-

(Testimony of Samuel D. Pickens.)

ley's handwriting.

Q. Now, nobody abused you when you were down here at Portland, did they? A. No, sir.

Q. You were ill, and they let you go right home, didn't they?

A. No, sir, we all went home—all went back. Only when I got sick, and I had to appear again—we had to be back here in 10 days—show up in 10 days.

Q. Weren't you sick when you went home?

A. No, I got sick after I got home. I was kind of sick when I left, but after I got home I got worse.

Q. And couldn't some back? [315]

A. No, sir; I couldn't come back. I got the fever.

Q. You were not in any way scared when you were making this affidavit before Mealey?

A. Well, I signed that. He said that would let us out—clear us up—something to that effect.

Q. Was Mealey scared?

A. Well, I kind of believe he was all right.

Q. You think he was scared?

A. I think he was scared—I think so.

Q. Wasn't he and all you people—when you got back up home you talked together there, and said, generally talked among you, that Kribs and these big fellows down here had bungled you out of your land, and you would just tell the truth and let them take the consequences?

A. No, I don't remember anything about that?

Q. You don't recall that? A. No, sir.

Q. Mealey was working for W. J. Burns when he

(Testimony of Samuel D. Pickens.)

went back up there, wasn't he?

A. I couldn't say.

Q. What? A. I couldn't say.

Q. (Mr. UELAND.) This witness doesn't know.

Mr. McCOURT.—No, *the* doesn't appear to know anything much.

Q. (Recross.) Now, at the time of this talk, when the special agent was there at Wodtli's, was there anything said about a location fee being figured in for the Mealeys in this mortgage? Do you remember anything about such talk?

A. Well, I don't know whether I do. I don't know as I do.

Witness excused. [316]

[**Testimony of Sydney Scanland, for the Government.**]

SYDNEY SCANLAND, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Scanland?

A. In the vicinity of Foster.

Q. What? A. In the vicinity of Foster.

Q. How long have you lived there?

A. Ten years ago this spring.

Q. What is your business? A. Laborer.

Q. Where did you live before you moved into the Sweet Home country?

A. Oh, I had lived down about ten miles this side of there for a couple of years; and then I have been

(Testimony of Sydney Scanland.)

off up in the part of the country known as Big Bottom, some 12 or 15 miles the other way.

Q. What sort of labor do you engage in?

A. Just most anything I can get to do.

Q. What is known as common laborer?

A. Known as common laborer.

Q. How long did you know the Mealey boys—Judd Mealey and W. R. Mealey—prior to 1900?

A. Why, I didn't know them at all until along in 1900.

Q. What were you doing there in the spring of 1900 after you moved into the Sweet Home country? Whom were you working for?

A. I was working for R. C. Watkins.

Q. What doing?

A. Why, general work. Sometimes I was making boards, [317] and helping build a barn, and working in his store, and hauling freight for him.

Q. Did you know John A. Thompson?

A. Yes, sir.

Q. What was Thompson's business at that time?

A. In the locating business.

Q. How long had you known him before that?

A. I got acquainted with him after I moved into the neighborhood there.

Q. Do you remember taking a timber claim in there shortly after you moved in? A. Yes.

Q. How long after you moved in was it that you took this timber claim?

A. About three months.

Q. Well, whom did you see before taking the timber claim in regard to taking it?

(Testimony of Sydney Scanland.)

A. I don't know—it was the common talk of the country there, if a man would take a timber claim he would make \$50 or \$100 out of it, probably; that there was parties from Brownsville and Crawfordsville had taken timber claims and realized that much out of it.

Q. Who was it understood that you could get the \$50 from, or the \$100?

Mr. LIND.—I object to that.

Q. Who was it said, in this common talk, that you could get this \$50 or \$100 from?

A. Oh, I don't remember now.

Q. Well, which of the Mealeys did you see?

A. Judd Mealey.

Q. Where did you go to see him?

A. I didn't go any place. He come along where I was at [318] work making boards, and I stopped him and asked him about it.

Q. What did he say?

A. Why, he said he would see, and let me know later on.

Q. Well, how later on did he let you know?

A. Oh, it was probably six weeks, maybe two months, I spoke to him again, and he says, "Yes, we have been up there in the mountains looking around, and found some timber land, and we can locate you."

Q. Well, what did you do then?

A. Well, we talked the matter over, and I told him I would take a claim if I could, if someone would advance the money to pay expenses, and I would give them a mortgage to secure them after the proof was made.

Q. Well, what did you do?

(Testimony of Sydney Scanland.)

A. I went in and looked at the timber claim, and then went to Roseburg and filed on it.

Q. Who was in the party when you went?

A. Went where?

Q. To Roseburg.

A. Oh. There was R. C. Watkins, Alexander Gould, Louis Maynard, and Will Rozell, John W. Lawrence, J. J. Gilliland.

Q. Malone? Was Keeney there? A. Yes.

Q. Jasper H. Keeney and his wife?

A. Jasper H. Keeney and his wife.

Q. Was old man Tuthill along?

A. I don't remember seeing him on that trip.

Q. Who paid your expenses on the trip?

A. Why, Mealeys, I presume they furnished the money to pay the expenses. [319]

Q. Did they give you the money to pay them with? A. No.

Q. Who paid your hotel bill, or did you have any?

A. Yes, we had a hotel bill. We eat while we was there.

Q. Well, when did you next hear of the claim, hear anything regarding it?

A. The next thing I seen was the advertisement in the paper—Brownsville paper, I think it was at the time.

Q. And what happened then?

A. I made note of the date when proof would be made, and we all went to Roseburg again.

Q. Whom did you go with?

A. I went with the same crowd I did before, about.

(Testimony of Sydney Scanland.)

Q. Who looked after you?

A. Why Mealeys furnished the teams.

Q. Who furnished the tickets?

A. They did.

Q. Well, when you got to Roseburg, what did you do?

A. Stood around town awhile till the Land Office opened up, and we went in and made our proof.

Q. Well, when you had got up to the Land Office, was Mealey there?

A. When we went to make proof, yes, sir.

Q. Which of the Mealey boys were there?

A. They were both there at that time.

Q. Both there? Thompson there?

A. Yes, sir.

Q. All the rest of these men you have mentioned there? A. Yes, sir.

Q. After you had made proof, what did you do?

A. Came down out of the Land Office, and was around on the street awhile, and they come to me and told me [320] there was a man there that would buy our claims.

Q. And who did they say the man was?

A. I don't remember now that they said at all who the man was.

Q. What did you do then after you heard that?

A. We went into the same attorney's office there and made out a deed.

Q. To whom?

A. Made out the deed to Frederick A. Kribs.

Q. Did you see Kribs there? A. No, sir.

Q. When did you first learn that you had made a

(Testimony of Sydney Scanland.)

deed to Frederick A. Kribs?

A. Right then. I read the deed over and saw his name on it, seen that I was transferring it to him.

Q. How much money did you get?

A. I got \$50 above all expenses.

Q. You hadn't been at any expense?

A. They had paid the expenses for me. I had borrowed the money from them or had made arrangements they should pay the expenses, and I would secure them with a mortgage if I didn't sell.

Q. And you did sell right away?

A. Yes, I did sell right away.

Q. Before Mealey ever came up there to see you, it was commonly reported in the neighborhood that there would be \$50 in the transaction, wasn't it?

A. No, there was nothing definite about it. It might be that much, and it might be more.

Q. How is that?

A. There might be that much, and there might be more. We had the privilege of holding the land if we wanted [321] to,—giving a mortgage and holding it. If we could raise the money to pay the mortgage we could hold the land indefinitely.

Q. How indefinitely did you hold yours?

A. I didn't hold it a great while.

Q. Two or three hours? A. Probably.

Q. Did you ever see the final certificate for the land? A. The patent?

Q. The paper that was issued the day you made proof.

A. Why, I think so. I think it was given to me.

(Testimony of Sydney Scanland.)

Q. Oh, you think it was. Did you pay any money there? A. No, sir.

Q. Was the money paid the day you were there?

A. Why, I presume it was.

Q. Did you see any paid?

A. No, I didn't see any paid.

Q. Don't you know it was not paid until a day or two later by Kribs?

A. No, I don't know it. [322]

Q. Didn't—Judd Mealey was there, wasn't he?

A. Yes, sir.

Q. And Will Mealey? A. Yes, sir.

Q. Didn't you hear Mealey tell, or rather nod his head to the Land Office man when it came time for you to make payment of the money?

A. Not that I know of; I don't remember of it.

Q. Didn't you notice him as each of you went up to the counter there, Mealey standing there and nodding his head to the Land Office officials inside of the counter? A. No, sir; I did not.

Q. You didn't see any money passed while you were there? A. No, sir.

Q. Did you give any money? A. I did not.

Q. Did you ever try to raise your money anywhere else? A. No.

Q. Did you ever inquire of Mealey how much he paid out for you?

A. No, I didn't inquire anything about what it was. I knew about what it was.

Q. Knew about what it was. About what was it?

A. I knew it was \$400 to be paid, Register and Receiver's fees and our expenses. Kind of kept run

(Testimony of Sydney Scanland.)

of it in my head, going back and forward on those trips, and the location fee was all to be included.

Q. When you started to sell to Kribs how much did you agree to sell to him for?

A. I think it was \$800.

Q. \$800? A. I think so.

Q. And you knew your expenses were only about \$450? [323]

A. Expenses was more than that.

Q. Well, how much more than that?

A. Well, I couldn't tell you just now.

Q. There was \$400 for the land? A. Yes.

Q. There was two trips to Roseburg for you?

A. Yes.

Q. And a trip to the— A. Timber.

Q. To see the timber? A. Yes, sir.

Q. That would not be more than \$100, would it?

A. No, I don't suppose it would, hardly.

Q. And you knew your deed said \$850, which would be \$350 coming to you?

A. Oh, what the price—the consideration—the number of dollars put in a deed don't have anything to do with the amount of money.

Q. You just said \$850?

A. That was marked on the deed. You see deeds made for only a dollar—the consideration named in it, and several dollars' worth of property changes hands.

Q. Did they give any reason for putting \$850 in it? A. No, sir.

Q. What? A. No, sir.

Q. How much were you selling your land for?

(Testimony of Sydney Scanland.)

A. I was getting \$50 above all expenses.

Q. Yes, and you didn't find out what the expenses were? A. No, I didn't.

Q. And you didn't care? A. Didn't care.

Q. No. Didn't it seem strange that this man Kribs, strange man you never saw before—having you sign for \$850 and paying you \$50 for it only?

A. No, I didn't give it any particular thought.

[324]

Q. How many more of you got \$50 there that day?

A. I don't know.

Q. You were down here in 1904, too—five, weren't you? A. Yes, sir.

Q. Do you remember talking to Mr. Burns about this transaction?

A. Yes, I remember getting cursed by Mr. Burns.

Q. Yes. Who were present? Who else was present when you were getting cursed?

A. Mr. Watkins.

Q. Yes, and Mr. Wiley? A. Who?

Q. Charles Wiley?

A. I don't remember his being present—might have been. I don't think he was when we was getting the cursing.

Q. Well, you didn't tell any lies there, did you?

A. I don't think so.

Q. Well, I will ask you now if that is your signature there on that affidavit?

A. That affidavit don't cut much ice.

Q. Well, we will see whether it don't cut much ice now.

A. I didn't read it over at the time and I think

(Testimony of Sydney Scanland.)

Mr. Burns just fixed it up to suit himself.

Q. That is the affidavit, isn't it, that you signed?

A. I think so.

Q. I will ask you if you remember making this statement: "Sometime in 1900 we learned that the Mealey boys were locating people on timber claims"—this affidavit being signed by yourself, Richard Watkinds and Wiley—Charles Wiley—"and we asked them to locate us. They told us there would be \$50 in it." Did you make that statement to Mr. Burns? A. Yes. [325]

Q. Did they tell you there would be \$50 in it?

A. Said there might be \$50 or might be more.

Q. Yes, and what were you going to do for the \$50?

A. Why, file and make proof on a timber claim.

Q. And what were they going to get for the \$50?

A. I don't know what they was going to get.

Q. What did you think they was going to get when you started into it? A. I didn't know.

Q. Didn't you know they were going to get the land? A. No, I didn't.

Q. What did you suppose they were putting you on that land for and paying you all your expenses and giving you \$50?

A. Well, they was to get the location fees out of it.

Q. From whom?

A. The people we sold the land to.

Q. Who sold the land to who?

A. If I sold the land to anyone else, to Kribs

(Testimony of Sydney Scanland.)

or to anybody. They give me the privilege of selling the land.

Q. Were they talking about Kribs at that time?

A. No, I don't think the name was mentioned at all that I remember of, but I had the privilege of selling the land myself.

Q. Did you try to sell to anybody?

A. Not at that time.

Q. Did you ever see Mr. Kribs at the time you did sell it? A. No, sir.

Q. Who did you think he was?

A. I suppose he was a human being.

Q. Did you know where he was from?

A. No, sir.

Q. Who paid you the \$50?

A. Judd Mealey. [326]

Q. That was the \$50 you thought you were going to get all the time, wasn't it?

A. I presume it was. I didn't know but maybe I would get more.

Q. Did you try to get more?

A. I hadn't then. Didn't try to get more until after I had made proof and then they came on and I decided to take the \$50 and not bother with it any more.

Q. Did you dicker with them about the \$50?

A. No.

Q. Went right with the crowd to that office and signed the deed, didn't you? A. Yes, sir.

Q. And signed it right up without any question about it at all? A. Yes.

Q. And took your \$50? A. Yes, sir.

Q. Were you paid right there in Roseburg?

(Testimony of Sydney Scanland.)

A. Paid in Roseburg.

Q. Now, then, do you remember about a year after that signing going up to Wodtli's house and signing another instrument?

A. Yes.

Q. Who notified you to go there?

A. I don't remember now who did notify me.

Q. Who do you think it was?

A. I don't know who that was; I suppose some one come in and said a Special Agent was up there.

Q. What did he say the Special Agent had to do with you?

A. (Witness shrugs.)

Q. You say you don't know what he had to do with you? [327]

A. I don't remember now.

Q. When you got to Wodtli's house what time of day was it?

A. I think it was in the afternoon.

Q. Was anyone else there?

A. Why, there was quite a number around.

Q. Were they that same crowd of fellows who had gone to Roseburg with you?

A. Some of the same ones, not all of them.

Q. And some others, weren't there?

A. I don't remember now.

Q. All men living around in your community there?

A. Neighbors around there.

Q. Was Judd and Will Mealey there?

A. Yes, sir.

Q. Was John Lawrence there?

A. I don't remember now whether he was or not.

Q. What conversation did you have with the Mealeys before you went into the room to give your affidavit?

(Testimony of Sydney Scanland.)

A. I don't remember that I had any.

Q. Well, you were all talking together there outside—you and the Mealey boys?

A. Usually a crowd of men together talk.

Q. And you were all talking about the matter of making those instruments?

A. Probably were.

Q. Yes, and what you would have to say when you got in there and what questions you would be asked?

A. Probably.

Q. And how you should answer?

A. I don't know about that. We got some of the information from Mr. Stratford—how we should answer questions.

Q. What did Mr. Stratford tell you? [328]

A. Well, he would ask the questions in a way that would imply the answers that he wanted.

Q. And you would just answer then that way? That is your signature there, is it?

A. That looks kind of familiar.

Q. Was Will Mealey in the room while Stratford was asking you questions?

A. I don't remember whether he was or not.

Q. What is your best recollection about that?

A. Well, I said I didn't remember whether he was or not. Now that is all—

Q. Might have been in there?

A. He might have been, and he might not.

Q. Did you get your inspiration from Mr. Stratford when he asked you this question: "How much, if anything, did you pay him for his services? A. \$50." That is referring to being located by William

(Testimony of Sydney Scanland.)

Mealey? A. Yes, sir.

Q. Did Mr. Stratford answer that question for you?

A. Kind of implied it. He would ask a question and if a man was a little slow in answering, he would make a suggestion.

Q. He was the man that mentioned the \$50?

A. I think he was.

Q. Well, now, I will ask you if he gave you inspiration about this: "How did it happen that you sold the land so soon after having made your final proof? A. A gentleman met me on the street and asked me if I had been making proof on a timber claim. I told him I had. He asked me if I would sell it and I told him providing I could make more out of it by selling it than handling the timber myself, and he offered me \$850 for it, and thinking that was more than I [329] could realize out of it at the present time, I took him up at his offer." Did Stratford give you inspiration on that?

A. I think not.

Q. Who did?

A. I don't know. I could not say as to that.

Q. "Who was the gentleman you referred to?"

A. I could not say. I didn't ask the man his name." Did Stratford inspire that answer?

A. No.

Q. Who did? A. I answered that correct.

Q. It was. Now, you did meet a gentleman on the street?

A. I didn't ask him his name. The question was asked me who I sold to—deeded to—made out the

(Testimony of Sydney Scanland.)

papers or the transfer made to—transacted the business with. I remember his asking me that question and I told him I didn't know the man's name.

Q. You didn't know the man's name that wrote the deed? A. No.

Q. You never had a word with him about selling the timber land—timber claim, or anything else, did you? A. No, Mealey came to me.

Q. You were taken there by Mealey and the deed was already made for your signature when you got there?

A. I don't know whether it was already made or made after I got in there.

Q. Well, you had nothing to do with directing its making? A. No, I didn't draw it up.

Q. And that man had nothing to do with the timber land transaction at all, so far as his conversation is concerned?

A. I don't know about that. [330]

Q. Did you see Kribs there? A. No, sir.

Q. Who inspired this answer: "Who, if anyone, furnished you with the money or any part thereof with which you paid the Government for this land and the expenses incident to this entry? A. No one."

A. I don't remember.

Q. What is that? A. I don't remember.

Q. You remember answering that question?

A. No, I don't.

Q. How is it you can remember these others and can't remember that one?

A. A man can't quite remember everything.

(Testimony of Sydney Scanland.)

Q. Well, I will ask you if you remember this?

A. Yes.

Q. "Did you take the money with you to Roseburg to pay for this land when you went there? A. I did."

A. In one sense of the word, I did.

Q. How much money did you take to Roseburg there when you went down?

A. I didn't carry it in my own pocket, but I had made arrangements with others to pay the bills.

Q. And who did you make the arrangements with? A. The Mealey brothers.

Q. Did you mean to mislead the Government agent there when you answered that "I did"?

A. No.

Q. Did you have in mind the mental reservation that Mealey carried the money down there and that was you carrying it?

A. I don't quite understand your question.

Q. Did you have that mental reservation that you are talking about now—the idea in your head that really it was [331] you carrying it when Mealey carried it?

A. Why, yes. If I borrow money of a man it doesn't matter whether I carry it or not. If he is going to pay the bill for me—if I make arrangements for him to pay a bill for me it don't matter whether I carry the money or not. If I make arrangements with him and offer him security it is really my money—if I offer a man security and he agrees to furnish the money.

Q. Is it?

A. The way I look at it.

(Testimony of Sydney Scanland.)

Q. If he carries it in his pocket that is the same as if you carry it in your pocket?

A. If he carries it and pays my bills and I have made arrangements to secure him, it is the same as my money.

Q. But it is you carrying—

A. I didn't particularly carry it.

Q. Well, you told the man you did?

A. Maybe I did.

Q. Well, you remember you did, don't you?

A. No, I don't remember it.

Q. "Was the money paid for the land paid you in cash or by check? A. Paid in cash." That is true, was it? A. Yes, sir.

Q. "How much cash was actually passed to you at the time the sale was consummated?"

A. \$50.

Q. "\$850." Who answered that, now? How did you happen to answer that?

A. I think Stratford kind of insinuated that some way or another.

Q. Isn't it a fact you got your instructions to answer that [332] from the same place you *are* getting instructions to answer questions right here now? A. No, sir.

Q. The same parties? A. No, sir.

Q. I say, isn't that a fact? A. No, sir.

Q. Didn't you?

Mr. UELAND.—This is not a reflection on the attorneys?

Mr. McCOURT.—No, I am not reflecting on the attorneys. I am getting back behind the attorneys.

(Testimony of Sydney Scanland.)

Q. Didn't you attempt to tell Mr. Rabb here two or three days ago that you got your money—or thought you would make arrangements to get your money from Sterling, Illinois, somewhere?

A. Yes, sir, I thought I would get the money there to pay off this mortgage.

Q. How is that?

A. I told him I thought I would get the money there to pay off the mortgage and hold the land.

Q. You did. When did you think that?

A. Just before we made proof there, and when I got down to Roseburg I changed my plan.

Q. The next time you talked with Mr. Rabb you forgot it was Sterling and told him it was Kertzner, Illinois.

A. I never told him any such name as that; beg your pardon. Mr. Rabb come to my place about a year ago and I told him I would not make any statement; didn't have to. If I made another statement it would be in court. He said I didn't have to make any statement. What I said would never be written down. He asked me questions and sometimes I gave him evasive answers and he would go ahead anyhow. He would ask questions and write. He got a lot of stuff wrote. [333] I don't know what he wrote. He didn't read it over and I never signed it.

Q. He didn't ask you to sign it?

A. I would not have if he did.

Q. Told you he would not let you sign any such statement, didn't he?

A. I don't remember that. He said it would never come up in court—the statement. What I said

(Testimony of Sydney Scanland.)

to him would never be brought up in court.

Q. What did he say, now?

A. He said it wouldn't be brought up in court.

Q. Didn't he come to see you for the very purpose, as he told you, of ascertaining what evidence the Government would be able to secure in this very case?

A. I don't remember now whether he did or not.

Q. And didn't you tell him that you just recently given Mr. Jamison authority to appear for you in this case—given him a power of attorney to appear for you in this case?

A. I don't remember telling him.

Q. Wasn't it this case that you were talking about right then and there? A. Might have been.

Cross-examination.

(Questions by Mr. LIND.)

Have you ever had any conversation with myself with regard to this claim or any other matter?

A. No, sir.

Q. We never had a word of conversation in our lives, have we? A. No, sir.

Q. Have you ever talked with my associate?
[334] A. No, sir.

Q. Judge Ueland—this gentleman to my left?

A. No, sir.

Q. Have you ever talked with Senator Gearin on the subject? A. No, sir.

Q. Did you ever have any conversation with any one of us three? A. No, sir.

Q. Has anyone on the part of the defense told you or asked you in regard to your testimony in this case?

A. No, sir.

(Testimony of Sydney Scanland.)

Q. Did you come under subpoena issued by the Government, served on you by a Government officer to testify now? A. Yes, sir.

Witness excused. [335]

[Proceedings Had April 28, 1910, 2 P. M.]

Portland, Oregon, April 28, 1910, 2 P. M.

Mr. McCOURT.—I don't know whether I have done so heretofore, but I wish to request of counsel that they furnish us, or let the defendant Kribs furnish us with the cancelled checks, evidencing payments made by him, to either O. J. Mealey or Will R. Mealey, or both of them, or to John A. Thompson.

Mr. LIND.—Between what dates?

Mr. McCOURT.—Between the 17th day of April, 1900, and the 1st day of November, 1902.

Mr. LIND.—Yes, you made that request, and I communicated it to Mr. Kribs.

Mr. McCOURT.—And also to any of the defendant entrymen mentioned in this suit, between those dates.

Mr. TANNER.—I will take it up with Mr. Kribs and see if he has got them.

Mr. McCOURT.—I have concluded, if the Court please, that that is all the witnesses we shall have at the present time, and ask the privilege of calling Mr. Puter later, and of taking of such depositions as the case may suggest after Mr. Puter's testimony is in, which we will agree upon with counsel, if there will be any. There may not be any depositions. It may be that Mr. Puter's evidence will not measure up to what I expect, and I may have to go to some other source to get the information I require.

Mr. UELAND.—Mr. District Attorney, would it

not be just as well to understand at this time whether, as to the testimony which shall not be taken in court on either side, it would not be better to take it orally before some examiner to be appointed by the Court instead of in the form of depositions? [336]

Mr. McCOURT.—I desire to take it orally. I meant the interrogatories to be propounded orally.

Mr. UELAND.—All right.

Mr. McCOURT.—That it be taken before an examiner rather than a mere deposition. I wish to be represented.

Mr. GEARIN.—Yes, both sides will.

Mr. TANNER.—Before the Court passes on those letters the Court has in reserve, I would like to submit some authorities.

COURT.—I made some examination during the noon recess and I am satisfied that the privilege extends to documents notwithstanding the fact that they were voluntarily delivered by the attorney to some third person. I think Mr. Wigmore lays down that rule.

Mr. TANNER.—There is an authority I have squarely on the point.

COURT.—Mr. Wigmore says that does not relieve the question of privilege at all. An attorney cannot voluntarily deliver a documentary communication from his client and thus make it competent testimony. But it does say if surreptitiously taken it may be competent. I do not understand the force of that rule, but that is what he states the rule to be. In this case it appears to have been voluntarily delivered.

Mr. McCOURT.—I am not prepared to say in this

case we got them surreptitiously. If Mr. Tanner will concede I got them that way, I will take advantage of it.

COURT.—That may be excluded from the record as testimony in the case then.

(The papers marked “Government’s Exhibit 68” excluded from the record.)

Mr. McCOURT.—It is understood of course that when we get those bank statements from Roseburg we may put them in.

Mr. LIND.—Oh, yes, yes. [337]

I wish also the Stratford check offered in the other case. We may offer it in this case later when properly identified in that one.

Marked “Gov. Ex. 66” for identification. [338]

Mr. McCOURT.—We would like to be furnished with the correspondence between Mr. Smith and Mr. Kribs from April, 1900, following, relative to the entries in this case.

Also the original contract or a duplicate of it, between Mr. Kribs and Mr. Smith entered into about January, 1900, relative to the purchase of lands in Oregon.

Mr. UELAND.—We have been informed by our clients that they had no written contract between Mr. Smith and Mr. Kribs during that period, and relating to the lands in question here, and we have no such contract.

Mr. McCOURT.—Mr. Kribs testified in some case here that he did have a written contract.

Mr. LIND.—He did later on; not at the time. My recollection is it was about the 31st of December,

1900, that there was a written contract—sometime in December, 1900.

Mr. UELAND.—1901.

Mr. LIND.—My associate's recollection is better than mine on that point.

Mr. McCOURT.—There are some checks that I wish to call for. I will call for them generally as checks to O. J. and Judd Mealey or the Mealey brothers or either of them, or to John A. Thompson, from April 17, 1900, to and including December, 1902. All checks of Mr. Kribs to these parties during that time.

Now, then, will it be admitted without the necessity of my calling witnesses, that there were commencing in February, 1901, up to and after the issuance of patents, certain payments made to Pierce Mays or to the firm of Carey and Mays, and the firm of Mitchell and Tanner—sums of money aggregating \$50 per claim to the firm of Carey and Mays, and Pierce Mays, and \$25 per claim to Mitchell and Tanner upon the [339] land embraced in this case, for the purpose of facilitating the passage of the entries to patent.

Mr. LIND.—We will look into the matter and at two o'clock will be advised as to facts in regard to the matter, and if the facts are as you state, we will so agree subject, of course, to all objections as to competency and materiality.

Mr. McCOURT.—I want to include in these payments a payment of \$100 or more to John Van Zant in connection with the Mitchell and Tanner payment.

Now, there is certificate from the Roseburg Bank being prepared. That will be used in this case.

Mr. LIND.—That will be admitted.

Recess taken until 2 P. M. [340]

Mr. McCOURT.—Have you the correspondence?

Mr. UELAND.—We have no correspondence.

Mr. McCOURT.—If the Court please, Mr. Tanner has furnished me correspondence from Mr. Kribs, the earliest date of which is December 31, 1902, with the statement that no prior correspondence can be found.

Mr. TANNER.—That is his information to me. I told him to get everything he had on the subject. That was what he furnished. He thinks previous letters have been mislaid, or destroyed, if there were any.

Mr. McCOURT.—Without putting any of this correspondence into the record, I think it may be stated that none of the correspondence mentioned refers to the lands in this case. There is some reference in one or two of the letters to Mr. Puter and possibly incidentally, one tract of land involved in case 3320 is mentioned. I should like to have the record show the letters were offered.

COURT.—Do you want them copied into the record?

Mr. GEARIN.—They are wholly immaterial.

Mr. McCOURT.—The only materiality they have is showing the frequency with which correspondence passed between the parties and the completeness with which they were advising each other of the transactions occurring between them.

Mr. UELAND.—I would suggest that counsel keep it and if he finds anything with any bearing upon this

case, that he introduce it.

Mr. McCOURT.—Very well; I will do that.

Now, the checks from Mr. Kribs to Mr. Mealey.

Mr. LIND.—I was unable to find Mr. Kribs during the noon recess.

Mr. McCOURT.—The Government offers to prove that in [341] the year 1901 prior to the issuance of patents in this case, Mr. Kribs entered into an agreement with the firm of Mitchell and Tanner to secure their services in expediting the lands in question to patent, together with other lands. And pursuant to that agreement Mr. Kribs, by his check of October 15, 1901, paid to Mitchell and Tanner \$600 as a retainer in the matter mentioned, \$100 of the sum to be used to cover the expenses of John Van Zant in assisting and procuring affidavits from entrymen. And later, on June 14, 1902, pursuant to arrangement with Mitchell and Tanner, Fred A. Kribs paid Mitchell and Tanner the sum of \$1,000. Both of the checks mentioned being drawn upon the First National Bank of Roseburg. And also on the 14th day of February, 1902, Fred A. Kribs in connection with the same matter paid Mitchell and Tanner by check on the same bank the sum of \$500. That other payments were made to Mitchell and Tanner in the same connection upon the Merchants' National Bank of Portland, Oregon.

Mr. TANNER.—Those don't relate to those lands alone. There are other transactions.

Mr. McCOURT.—They related to this and 3320 and possibly others, possibly the Pillsbury matter. In connection with the offer mentioned the Govern-

ment's counsel offers in evidence checks mentioned. This offer is made for the purpose of showing that the several payments were made out of the account of Fred A. Kribs in the First National Bank of Roseburg, Oregon, which was, up to the date of these checks, wholly made up of drafts and money furnished by C. A. Smith.

Mr. UELAND.—The defendants represented by us object to this offer on the grounds; first, that it is irrelevant, in that it does not tend to prove any of the charges of fraud [342] contained in the bill. And, second, that it is immaterial in that it does not tend to prove the fraud as a ground for cancelling the patents in question.

COURT.—I understand the charge in this case is that Smith was a party to the original conspiracy, and that the conspiracy was for the purpose of defrauding the United States out of these lands; therefore there has been evidence offered by the Government tending, or at least claiming, to show that state of facts, connecting Smith through his agent or representative, with the original entry of these lands, and with final proof, and in taking over the tract from the entrymen. Now, the title didn't pass from the Government until the patents were issued, and whatever was done by these people from the time of entry down to the time of the issuance of patent, I suppose would be competent for some purpose, provided they can be connected back to the original transaction. Of course, if Mr. Smith bought the land from the original entrymen in good faith and found some question about the title and then

employed attorneys to straighten the matter out, it would not be evidence that he was a party to the original conspiracy, but if there is other evidence tending to connect him with the original conspiracy, I suppose the Government is entitled to show it. At least that would be the ruling in an equity suit. That is, that the Government is entitled to the benefit of the record.

I shall, therefore, overrule the objection and let the testimony the Government offers come in.

Exception saved.

Mr. McCOURT.—I understand that counsel will admit the facts to be as I have stated. Therefore, it is in evidence subject to the objection which you made and you will make [343] no question as to the further identification of the checks.

Mr. UELAND.—Subject to the objection and the saving of the exception, the defendants will admit the facts to be as stated in the offer, save only that the payments were not made wholly concerning the obtaining of patents to the lands involved in this suit, but covered the subject matter of obtaining patents to other lands. The amount to be paid to the attorneys for obtaining patents in this suit being \$25 for each claim.

Mr. McCOURT.—That is as I understood it, but Mr. Tanner corrected me and I did not want to make the statement.

Mr. TANNER.—My recollection of the agreements I had with Mr. Kribs at the time was that there was no agreement about so much a claim, but a retaining fee of \$500 and \$500 more when the patents issued.

There were other payments relating to lieu selections and other matters having no connection whatever.

COURT.—I suppose the important feature from the Government's standpoint is to show that Kribs was using Smith's money for purposes of this kind, and the amount used is not material.

Mr. UELAND.—I would like to have stricken out my statement of \$25 a claim.

COURT.—It is not important. That may be stricken out.

Check of February 14, 1902, marked "Government's Exhibit 56."

Check of June 14, 1902, marked "Government's Exhibit 57."

Check of October 15, 1901, marked "Government's Exhibit 58."

Mr. McCOURT.—I further offer to show that Mr. Kribs on September 19, 1900, out of his bank account in the First [344] National Bank of Roseburg, the funds of which were furnished by the defendant C. A. Smith, paid to Joseph T. Bridges, Register of the U. S. Land Office at Roseburg, Oregon, the sum of \$1500 by check dated September 19, 1900, in favor of Mr. Bridges and endorsed by him. I don't need to repeat that matter of checking up or periodical accounting.

Mr. LIND.—That is objected to as irrelevant, immaterial and not bearing upon any issue in this case.

COURT.—Do you claim that has reference to the lands involved in the present case?

Mr. McCOURT.—Well, I don't know. It was given before the proofs were made in over half of the entries in this case. * * *

COURT.—I don't understand just what connection this transaction can have with the case now under consideration without some evidence explaining it in some way.

Mr. McCOURT.—Well, if the Court please, I will withdraw the offer of that check, with the privilege of offering it later if I can offer some evidence along with it that will make it competent.

COURT.—Very well.

Mr. McCOURT.—It is agreed that the register of the Revere House at Albany shows that Fred A. Kribs, wife and two sons were registered at said hotel April 1, 1900, and on Monday, April 2, 1900, S. A. D. Puter registered at said hotel.

The register of said Revere House further shows registered there on Sunday, May 20, 1900, C. A. Smith, H. H. Davis, S. A. D. Puter, F. A. Kribs, all in the handwriting of Mr. Kribs. On said date said register further shows present at said hotel William R. Mealey of Foster, Oregon. [345] The register of the Revere House shows registered at said hotel Sunday, November 3, 1901, J. Van Zant, Portland—that he arrived and took lodging. Monday, November 4th, the register of said hotel shows registered at said hotel E. D. Stratford, Roseburg, Oregon—arrived at noon or near noon. On Saturday, November 9, 1901, the register of said Revere House shows registered there E. D. Stratford, Roseburg, Oregon, "S" (Supper). Assigned Room 29. O. J. Mealey, Foster, Oregon, supper—arrived at supper time; assigned room 28. J. Van Zant, Portland, arrived supper time, assigned Room 28.

It is agreed between counsel that the record of

registry at the McClallan House, Roseburg, as appearing in the case of U. S. vs. Nils O. Werner et al., No. 3320, may be considered as the record in this case as follows:

Extract from testimony of O. A. McClallan, in No. 3320, the witness having been requested to examine the register for the month of April, 1900.

“The first entry is on the 13th day of April. Mr. Kribs, wife and two children arrived to supper in the evening, left on the 21st day of April at breakfast.

“Q. (By Mr. McCOURT.) Read the entire entry.

“A. And McMullen supper, lodging and breakfast \$1.50; total paid \$36.60.

Q. I note in that same entry under the column “house” the designation “Mac” opposite the entry which you have just read.

A. They also have an annex at the hotel there and this is to show that he had room No. 1 in the main hotel, what is called the Mc House—the McClallan House. Some entries were made that way. Here is one, *Roo*, 44 in the Van [346] Houghton House. All the entries are not made that way, but some of them were at that time.

Q. The next entry.

A. On the 25th day of April he was there. Kribs and boy had Room 1. Phone ninety cents, fifty cents, \$1.20, \$.50, \$.50, \$.95. Laundry 90 cents. Left on the 30th day of April, after lodging. Forwarded \$12.50—the bill was not paid at that time. The next entry is on the 28th day of April, Room 1, McClallan House. Kribs, Mrs. and boy. Arrived to supper.

Left on April 30th after lodging, total amount \$5.00, forward.

The next entry is on the 1st of May, 1900, Room 1, McClallan House, Kribs and Fred. Forwarded \$17.50; phone \$5.45, drayage 50 cents, left the 22d day of May after supper. Total amount \$112.90, marked paid.

That \$112.90 also includes another entry here for the 1st day of May, 1900, Mrs. Kribs and Bud. Here is an entry on the 11th day of May, B. and K. Left, returned on the 14th day of May, phone 80 cents, laundry 35 and 30 cents. Left on the 22d day of May after supper; total amount paid \$112.90. That entry, I would judge, means that they left at breakfast on the 11th day of May—Kribs left—"K," I notice it now, 11th day of May Kribs left. The next entry is on the 1st day of June. Occupied Room 1. F. A. Kribs arrived for lodging, left on the 4th day of June after supper. Total amount paid \$4.50. On the 5th day of June, 1900, F. A. Kribs occupied Room 1. Came for lodging. One extra meal. Left on the 6th day of June; total amount paid \$2. 7th day of July, 1900, F. A. Kribs and family Room 1, arrived for lodging. Express 70 cents, McMullen account. Laundry 25 cents. Davis and D., \$11.00. Now, there are four or five accounts here right in a row. The accounts are transferred. Left on the 31st day of July after lodging. Total amount paid \$159.15." [347]

Mr. McCOURT.—Register further shows on September 29, 1900, F. A. Kribs and family, Room 1. Left the 14th of November, 1900.

Mr. LIND.—The book of entry shows he paid for a room.

Mr. McCOURT.—The book entry is as follows: September 29, 1900, Room 1. F. A. Kribs and family. Left the 14th of November, 1900, after lunch, R. L. \$11.45, forward. There is a charge to McMullen and “one” \$3.55, laundry 55 cents; 14th of November, stamps 10 cents, food \$11.45.

What I am trying to get at is to show that Mr. Kribs was there during the time these proofs were made.

Mr. LIND.—He will state it if you call him, and if you don't we probably will.

Mr. McCOURT.—The second line shows 10th of December charge, \$34.40 forward. He registers that date. The next line shows the 9th of December—arrived the 9th. Room 1; F. A. Kribs and family, left the 31st of December, 1900, \$80.00 paid. The room book does not show Mr. Kribs at the hotel after the latter date down to the 16th day of February, 1901, that being the last in the book.

Whereupon proceedings herein were adjourned until Thursday, April 28, 1910, at 10 A. M. [348]

[Proceedings Had April 28, 1910, 10 A. M.]

Portland, Oregon, Thursday, April 28, 1910,

10 A. M.

Mr. McCOURT.—I would like to have the record show that the Court may consider the original C. A. Smith deed, purporting to have been made June 4, 1900, together with the accompanying deeds in case U. S. vs. Nils O. Werner et al., No. 3320, in this case for the purpose of comparison and determining the fact when they were made.

COURT.—Is the land involved in this case described in these?

Mr. McCOURT.—In that deed; yes.

Deed C. A. Smith marked “Government’s Exhibit 59.”

Deed J. E. Holmberg and wife to Charles A. Smith, dated October 26, 1906, marked “Government’s Exhibit 60.”

Deed Charles J. Swanson and wife to Linn and Lane Timber Co., May 28, 1907, marked “Government’s Exhibit 61.”

Deed Charles L. Trabert and wife to C. A. Smith, October 23, 1906, marked “Government’s Exhibit 62.”

Deed B. F. Nelson and wife to C. A. Smith, August 10, 1907, marked “Government’s Exhibit 63.”

Deed J. A. Willd and wife to C. A. Smith, October 27, 1906, marked “Government’s Exhibit 64.”

Deed Nils O. Werner and wife to L. & L. T. Co., August 15, 1907, marked “Government’s Exhibit 65.”

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COURT.—So far as these letters are concerned (correspondence between Mr. Kribs and Mr. Tanner) I think you had better offer them and the Court will reserve the ruling.

Mr. McCOURT.—They can be marked as one exhibit at the present time.

Correspondence marked “Government’s Exhibit 68.”

Correspondence consists of letter of Oct. 27, 1901, Kribs to Tanner; telegram November 6, 1901, Kribs to Tanner; letter November 9, 1901, Kribs to Tanner; telegram December 18, 1901, Kribs to Tanner; letter

(Testimony of E. D. Cusick.)

January 31, 1902, Kribs to Tanner; letter November 20, 1901, Kribs to Tanner. [350]

[**Testimony of E. D. Cusick, for the Government.**]

E. D. CUSICK, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

You live at Albany, Mr. Cusick? A. I do.

Q. What is your business there?

A. Banking business.

Q. How long have you been in the banking business there?

A. In my present position since 1892.

Q. What is the name of the bank with which you are connected?

A. J. W. Cusick and Company, Bankers.

Q. What position do you occupy in the bank now?

A. Cashier.

Q. You say you have been cashier since 1892 or 1902? A. 1892.

Q. Do you know W. J. Mealey? A. I do.

Q. O. J. Mealey? A. I do.

Q. John A. Thompson? A. I so.

Q. I will ask you whether or not either one of those persons had any account in your bank at Albany in the years 1900, 1901, 1902 and 1903?

A. They did not.

Q. Did Fred A. Kribs have any account there?

A. He did not.

Q. Do you know where Foster and Sweet Home

(Testimony of E. D. Cusick.)

are? A. I do.

Q. How long have you lived in Linn County?

A. 34 years, I believe—no, 32 years, I think.

Q. State whether or not Albany is the usual and ordinary banking point for people living up about Foster and Sweet [351] Home if anybody up there has any banking business?

A. Well, it is divided with Lebanon.

Witness excused. [352]

**[Testimony of O. A. Archibald, for the
Government.]**

O. A. ARCHIBALD, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Archibald?

A. Albany.

Q. In what business are you?

A. Banking business.

Q. What bank are you connected with in Albany?

A. First National Bank.

Q. How long have you been connected with that bank?

A. Been in that bank about fifteen years.

Q. What capacity did you occupy in the bank in the years 1900, 1901, 1902 and 1903?

A. Assistant cashier.

Q. And now what place do you occupy?

A. Cashier.

(Testimony of O. A. Archibald.)

Q. Are you familiar with the books and accounts and records of that bank as far as the year 1900 and previous? A. Yes, sir.

Q. Are you the present custodian of those records? A. Yes, sir.

Q. Do you know O. J. Mealey, W. R. Mealey and John A. Thompson? A. Yes, sir.

Q. Do you know Frederick A. Kribs?

A. No, I don't know him.

Q. You don't know him.

A. Not personally, no.

Q. Has Mr. Kribs ever had an account in your bank? A. No, sir.

Q. Have you examined the books of your bank to ascertain [353] the condition of the accounts of O. J. Mealey, W. R. Mealey, John A. Thompson and the joint account of O. J. and W. R. Mealey?

A. Yes, sir, I have.

Q. Have you made a transcript of your books showing those accounts?

A. I have—their accounts after 1900. There is a transcript of their accounts and part of the original from 1900 to 1904.

COURT.—Please speak louder.

A. From 1900 to 1904, inclusive. The accounts opened in 1900, I think.

Q. These slips that are attached to the accounts, or rather, the accounts that I hold in my hand, are those the ones you made—the transcripts?

A. Those are the transcripts, yes, sir.